15

M.S. en 4.º pergamino mal tratado con 225 hojas

Selectiones juris utriusque fori.

[illegible] [illegible] u. st lig. [illegible]

M.S. en 4.° pergamino mal tratado con 225 hojas

Praelectiones juris utriusque fori.

Rotulata

Prelect. Jur. utriusq. t. K.

Diolo al Colegio este año de 1692 el Sr. Dn. Xptoval de Henestrosa y Ran de Nuvera, natural de Orera, Colegial de esta Casa siendo Pres.te de la Univd. de esta Ciud. y electo en este año Reg.te del Supremo Consejo de Navarra q. a dado por auer tenido vna chaque al tiempo de executar su viage se excuso de la plaza

Don Xpl. de Henestrosa

Est. 2. de Nº.

Cax. E

[illegible] ... [illegible] [illegible] in ... anno [illegible] 1055 [illegible] 29 [illegible]

primario [illegible] ... [illegible] [illegible] aut reperiri ne

[illegible] [illegible] et [illegible]

[illegible] potentialiter potuit institutio [illegible] de [illegible]

[illegible] aliis prae[illegible] prior testamenti gradus adeo inutili

[illegible] extitit, quod institutus non potuit adeo casum [illegible]

[illegible] quo hereditatis adeundae [illegible] saltem obtinere

potuerit, igitur quatenus ad [illegible] spectat [illegible]

primo gradu institutus intelligitur et ex [illegible] secun-

do gradu vocatus vel substitutus seu institutus debet judi-

cari. N.° 13

Illud [illegible] difficilius occurrit quod [illegible] filii quae

in primo gradu intercessit in d. l. 3. § fin. ff. de lib. et posth.

etiam infirmare videtur in secundum aut ulteriorem quemlibet

[illegible] gradum ita ut totam dispositionem inutilem vedat

[illegible] testatoris judicium quasi indivisibile evertat, ut

non obscure demonstrat [illegible] in l. [illegible] in fin. ibi *si*

a primo gradu praeteritus a secundo exhaeredatus sit, nec

tamen nascatur posthumus quo aliquis ex institutis vivit,

totum testamentum ruptum est, nam tollendo primum gradum sibi

locum facit, ff. de injust. rupt. [illegible] [illegible]

[illegible] [illegible] ff. de ventre inspiciendo [illegible]

et [illegible] communiter Doctores (de filio posthumo [illegible]

jura exponentes) in d. l. 3 § fin. ff. de lib. et posth. et quique

[illegible] 4 ad Afric. in [illegible] (4) et in [illegible]

ad d. l. 3. § fin. ff. eod. et lib. 12 quaest. [illegible] in [illegible]

75 ff. de lib. et posth. et lib. 9 quaestionum Paul. in l. ex facto

43 § Lucius ff. de vulg. Ant. Fab. lib. 8 [illegible] cap. 20

[illegible] lib. 6 [illegible] cap. 16, et ibidem [illegible] [illegible] Valenz.

lib. 3 illust. sub tit. de suorum jure cap. fin. n.° 9 — et licet

verum sit in dictis juribus non de filiis natis, s. [illegible]

in [illegible] lib. 28. [illegible]

[illegible] [illegible] [illegible] docent, [illegible] gradu
eo tempore quo [illegible] [illegible] in [illegible] gradu a
quo [illegible] fuerunt, non solum primum gradum [illegible]
[illegible] [illegible] totum testamentum, et [illegible] secundum gra
dum a quo nominati fuerunt exheredati [illegible] [illegible]
[illegible] [illegible] ius militare videtur admisum [illegible] [illegible]
ignarus ut agere [illegible] videtur [illegible] [illegible] [illegible]
[illegible] § a primo, ff. de bon. poss. contra tab. in cuius specie
[illegible] de [illegible] ignorato, a primo gradu fuit [illegible] et
a secundo exheredatus, et dubitatur utrum si tempore quo pater
decedit, in rebus humanis existant, heredes scripti in
primo gradu a quo filius fuit [illegible], [illegible] [illegible]
bon. poss. contra tab. et obtinere [illegible] [illegible] heredes instituti
in secundo gradu a quo fuit exheredatus possit ab here
ditate removere. Et respondet talem bonorum possessionem
[illegible] omnes [illegible] omnesque gradus [illegible] [illegible] in
[illegible], igitur in specie proposita in d. l. [illegible] § [illegible] ff.
de lib. et posth. videbatur dicendum nullo modo posse
substitutionem [illegible] quandoquidem institutio [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et
consequenter totum testamentum [illegible] [illegible] ideo licet
secundus gradus ipso iure subsistat remedio tamen bo
norum possessionis [illegible] [illegible] [illegible] [illegible]
[illegible] iudicatur ex d. l. [illegible] §, § a primo ff.
de bon. poss. contra tab. et videatur Valent. [illegible] lib. 3 [illegible]
illustrium [illegible] [illegible] [illegible] [illegible] n. 7.

n. 14

[illegible] [illegible]
[illegible] rationes non obstant quominus in d. l. [illegible] § [illegible]
ff. de lib. et posth. [illegible] [illegible] a secundo gradu [illegible]
[illegible] et substitutus tanquam secundo gradu [illegible]

ad

[illegible] [illegible] exheredationem filio ex
heredato [illegible] [illegible] [illegible] l. [illegible] Cai[i] et
Juliani auctoritate [illegible] [illegible] q. [illegible] filij qui
in primo institutionis gradu [illegible] [illegible] gradu
[illegible] et nullus [illegible] [illegible] at [illegible] modo [illegible]
[illegible] debeat [illegible] [illegible] [illegible] [illegible] et
[illegible] testamentum [illegible] gradu [illegible] et [illegible]
[illegible] a quo filius exheredatus [illegible] [illegible] ex
l. [illegible] ibi Caius et Julianus [illegible] [illegible]
primo gradu testamentum [illegible] [illegible] [illegible]
[illegible] filius exheredatus [illegible] [illegible] sententia [illegible]
[illegible] filius [illegible] ff. de hered. inst. [illegible] in l. ex
facto § [illegible] ibi [illegible] totum testamentum
infirmant [illegible] [illegible] [illegible] ab initio in [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] et [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] traditionibus [illegible]
[illegible] [illegible] [illegible] principibus [illegible]
[illegible] primum institutionis gradum [illegible] [illegible]
[illegible] [illegible] fuit [illegible] testatoris [illegible]
[illegible] in primo gradu instituto hereditatem [illegible]
[illegible] [illegible] parte [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] allegata [illegible] [illegible]
[illegible] [illegible] § [illegible] [illegible]
[illegible] [illegible] 14 § [illegible] [illegible] [illegible]
[illegible] et [illegible] gradu [illegible] admittitur similiter
[illegible] heredes institutos in secundo gradu a quo filius
fuit exheredatus [illegible] et substitutionis [illegible]
ad hereditatem admitti [illegible] [illegible] [illegible]

substitutio [illegible] expressa qua alienae [illegible] a priori
instituto hereditas erat deferenda, nec acquireretur
[illegible] quam [illegible] requirit quod valeat adferri potuerit illud
[illegible] modo [illegible] quod ex testantis iudicio secundo
gradu heres ad hereditatem vocetur, et quod ad hereditatem
non posit admitti, vel ex voluntate heredis 1° gradu
vocati [illegible], ex impotentia iuris superveniente ex quolibet
capite eorum quorum meminimus sup. n° [illegible].

Non obstante
considerationes adductas sup. n° 12 [illegible] quamvis licet [illegible]
[illegible] [illegible] in [illegible] [illegible] [illegible] l. 5.
si [illegible] [illegible] ff. de vulg. [illegible] [illegible] [illegible]
[illegible] postnuncupatos a primo gradu preteritos, et a secundo
exheredatos in solo 1° gradu a quo preteriti fuerunt nati
vitam [illegible] [illegible] [illegible] [illegible] infirmare
[illegible] substitutum secundo gradu vocatum a quo
fuit exheredatus ab hereditate repellere, [illegible]
[illegible] [illegible] et [illegible] l. 5. § fin. et similibus lege
[illegible] adduci [illegible] posint, animadvertendum e
dissimile [illegible] [illegible] [illegible] in [illegible] [illegible] qui a
primo gradu fuerunt preteriti et a secundo exheredati
et [illegible] [illegible] [illegible] nascituris qui a primo gradu
fuerunt silentio pretermissi et a 2° gradu nominatim
exheredati [illegible] [illegible] in rebus humanis existentes
[illegible] testamentum [illegible] [illegible] suo [illegible]
et [illegible] [illegible] [illegible] animadversum [illegible] tantum
[illegible] nunquam [illegible] [illegible] [illegible] a quo
silentio fuerunt pretermissi [illegible] gradus nullum
[illegible] absolute et [illegible] [illegible] [illegible] [illegible] sive
prior sit sive secundus, sive ulterior quilibet gradus

[illegible]

[illegible]

[illegible] [illegible] in [illegible]
[illegible] [illegible] Ambrosio stanca [illegible]
[illegible] et d. [illegible] debb. [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] reddit [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] quominus [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] et a 2° [illegible] [illegible] [illegible] [illegible]
[illegible] de [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] a 2° [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] ad [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] ab initio [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] a 1° [illegible] [illegible] et a 2° [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] nihil [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

[illegible]

1

[illegible] qui, [illegible] in natus [illegible] et [illegible] erant [illegible] et a 2º [illegible] maxima [illegible] differentia [illegible] gradus nihil [illegible] reddat et 2us gradus [illegible] subricant ita ut ab [illegible] tertia [illegible] n. [illegible] humano [illegible] in [illegible] locum [illegible] testamentum [illegible] gradu aequo [illegible] fuit [illegible] potest [illegible] vel rumpendo [illegible] regula [illegible] cum [illegible] paritatis [illegible] tempore [illegible] potestate [illegible] inutile [illegible] reddit, ex [illegible] caetera [illegible] de lib. et posth. [illegible] gradu aequali [illegible] fuit [illegible] cum [illegible] n. [illegible] inutilis [illegible] demum [illegible] principio [illegible] aequo [illegible] fuit [illegible] parenti succedere [illegible] l. 1 [illegible] capite [illegible] gradu [illegible] aequo posthumus [illegible] simul [illegible] principio [illegible] posthumi [illegible] praeteritione [illegible] indicandum [illegible] a principio [illegible] gradibus [illegible] uno gradu [illegible] testamenti [illegible] in [illegible] gradu [illegible] tempore quanti gradus [illegible] a principio [illegible] mortuus [illegible] in [illegible] quo [illegible] gradu heredes [illegible] humanis [illegible]

nimer

et Albani

[illegible] ... scribe[illegible]

[illegible]

N.° 11

[illegible] in 1° gradu [illegible] [illegible] ... [illegible] ... licet [illegible] ... [illegible] in 1° gradu ... [illegible] ... et stabili [illegible] ... Ant. [illegible] ... villa [illegible] ... ut sibi [illegible] faciat, et [illegible] ... [illegible] ... [illegible] ... in 1° gradu [illegible] ... [illegible] ... [illegible] ... Fab. Cuj. [illegible] ... [illegible]

[illegible] 9

18 [illegible]

[illegible] [illegible] pueris [illegible] [illegible] [illegible] ro
[illegible] filii ignari et [illegible] quo [illegible]
[illegible] qui semper, et absolute posthumus [illegible]
[illegible] [illegible] [illegible] [illegible] interuenit,
tunc [illegible] si tempore natiuitatis [illegible] [illegible]
in 1° gradu aqui fuit [illegible] in re [illegible] [illegible]
[illegible] sit hereditatis adeunde et ob eam rem de [illegible]
[illegible] iure et facultate succedendi disputari posit quo
niam [illegible] posthumus naicat [illegible] ille gradus
aquo [illegible] [illegible] qualibet [illegible]
[illegible] [illegible] instituti ante aditionem [illegible]
[illegible] institutionis [illegible] [illegible] [illegible]
[illegible], [illegible] ille gradus [illegible] [illegible] hereditas
ad secundum gradum a quo posthumus fuit [illegible]
deuoluta sit tunc [illegible] [illegible] neque [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] ibi si ab intestato [illegible] venter [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] neque mittendi [illegible] ad eum gradum deuoluta
hereditas [illegible] [illegible] [illegible] ventre [illegible]
[illegible] [illegible] [illegible] causa primus gradus [illegible]
[illegible] [illegible] posthumi natiuitatem ad 2um gradum
hereditas [illegible] deuoluitur, et a 2° gradu [illegible]
[illegible] [illegible] ut de [illegible] superius animaduer
timus, [illegible] [illegible] [illegible] sicut sola potestate
legis 1° gradus [illegible] [illegible] [illegible]
[illegible] ita similiter [illegible] legis, et [illegible]
posthumi natiuitate [illegible] redditur 1° gradus [illegible]
posthumus [illegible] [illegible] ante natiuitatem posthumi

[illegible]

tavisimilius in nati a... relicti... gradu ... ... post nomi
nativitate ... decedunt ... ... adeundae
haereditatis redduntur ... in institutionis defecit. Unde
cum post aliquot tempora ... nascitur non inveniat ... gradum
... ... rumpere potest necessario. ... neque
secundus gradus rumpere potest ... quod ... ...
... quoniam ... ... rumpat necesse
... ... gradum ... ... reperit, et ...
... desiderat ... ... inveniat illum
gradum subsistentem et habilem, ut rumpi possit, alioquin
... neque 1.us gradus, ...
... neque 2.us ... ... legitime
... rumpere ... ... fundamenta ... ...
... ... gradus potest rumpere ma
... ...
... ...
... ... rumpendi 1.us ...
... neque 2.us ... ...
... ... Scriptores relati supra
n.o ...

Notandum tamen ... ... disparitatis
intellectum ... ... gradu 2.o
... 1.us ... ...
... 2.us ... gradu subsistente ... ...
... ... l. 3 § ... ...
... ... jure civili inspecto ... ... habere ...
... ... notantes animadvertimus n.o 15.o ...
... jure desiderato ... ...
... ... tab. ... ...
... ... inferiori gradui ... ulteriori quolibet ... ...

rit intentionem ... et locus ... in ... quarum
impio ... a 1° gradu ff. de bon. poss. ... tab.
poterit ... tab. bon. possessionem ... adversus
gradus in quo prterius reperitur et adversus heredes
... gradu institutos ... qui ... praeterius
judicium testatoris impugnavit ... in lucem
... facit ... nec doctrina intellecta ... cum eodem
tempore ... animadvertimus in posthumo qui a 1°
gradu fuit praeteritus, et a 2° ... ut sicut
desideraret posthuminatus ... tempore ... here
des instituti supervivum ... filius posthumus
silencio praeterminitus, itaut ... devolvatur ... ad
gradum secundum ... ut ... in ...
... nato requiritur ... gradus ... quo ... praeteritus ... vivus
erit ante mortem testatoris ... bon. poss. ... tab. ... tempore po
sit ... testator ... tempore ... filio
bonorum possessio ... gradu institutis ...
decedant ... ... heredes ... secundo gradu
vocatos ... ... bonorum possessionem petere
cum hereditas ... gradu a quo
praeteritus ... et in 2° ... ut ... for
te ... in l. ... § si a primo ff. de bon.
poss. ... tab. ... tempore quo ... et in
quo incipit ... filio bon. poss. ... illo
... silencio ... licet postea qui
... heredibus ... fortes
... post mortem patris decedentibus ... here
ditatem ... incapacitatem incidenti ...
... repudiaverunt, dicendum ... bon. poss. semel

fi ... petere ... durare, et quaque ...
... peteris ... ad 2. gradu a quo
... debuerat ...
... in d. l. ... §. si a primo ...
... de bon. poss. ... tab. ...
... bon. poss. ... in 1. gradu ...
... a successione ex-
cludatur ... secundo gradu ...
... impugnare aut bonorum possessionem ... remedio
... hereditatis ...
in d. l. ... 8 ... de bon.
poss. ... tab. ... Valen.
... n. 10.

N.o
20.

... in d. l. 3. §. ... de bon.
poss. ... in 1. gradu ... et ...
secundo ...
... sermone ... neque ad ius
... bon. poss. ...
... in 1. gradu ...
... in 2. gradu ... a quo
... iure sub-
stitutionis ad hereditatem admitti ... substituti ...
a 2. gradu legitime ordinato ...
... Leg. n. 12 ...
admitti ... 2. gradu vocatus ... a
2. ... l. ... §. fin. ... quoniam licet ver-
borum ... 2. gradus ... 1. gra-
dus ... ab ipso ... 1. gradus ...
... ad eos ... existiman-

B

tus sit

[illegible]

iure sit ut docent [illegible] in d. l. 3. § fin. ff. de lib. et post. [illegible] l. filius 75 ff. de hered. inst. l. ex facto 43 § Lucius ff. de vulgari l. 4. § 7. et 8. ff. de vent. in poss. mitt. [illegible] scripsere ordine [illegible] judicium [illegible] ut et institutus et substitutus [illegible] dicandi [illegible] ut inferius latius monebimus [illegible] observationes [illegible] juris [illegible] explicabimus.

21

Inde in d. l. 3. § fin. ff. de lib. et post. [illegible] ordine ordinato [illegible] voluntate testatoris animadversa duo gradus in testamento scripti [illegible] et [illegible] gradu scripti instituti dicuntur, et 2° gradu [illegible] substituti appellantur. Et ita docent [illegible] in d. l. filius 75 ff. de hered. inst. [illegible] in l. ex facto 43 § Lucius ff. de vulgari [illegible] neque [illegible] in 1° gradu [illegible] substitutionis [illegible] aliquid detrahitur, licet [illegible] institutus neque [illegible] heres [illegible] 2° gradu nulliter ordinato neque deferri neque acquiri hereditas potuit [illegible] in judicium [illegible] 2° gradu scriptus fuit [illegible] substitutus appellari [illegible] animadverti [illegible] ad substitutionem [illegible] desiderari [illegible] hereditas deferatur, aut acquiratur, aut [illegible] potuerit [illegible] sufficit ut ex voluntate testatoris [illegible] substitutus 2° loco [illegible] 2° gradu a testatore ad hereditatem vocetur. [illegible] [illegible] primo gradu [illegible] ut institutus [illegible] hereditas, aut [illegible] bon. poss. [illegible] hereditati [illegible] potentia illa [illegible] 2° gradu fuit vocatus [illegible] substitutus appellari [illegible] affirmari posse, ex [illegible]

fuit

fuit hereditatis retinenda aut acquirenda eā ex qualitate tamen necessaria talis potentia in herede insuper admit: et illatā quis pontus reperiatur, vocando q. bon. possess. Rqalecha instituto paret siedi ... ... Sicco 17 ... Cui serviendaē ... ... posthumus 12 ... ... Leonum ... Exposicione ... ... q. q.

22.

Creaig. resolut. ... rebus ... ... inhibito ... ... ut 2 grada ... ... tenoga ... ... in ... ... omnibg 1093. ... ... 1. ... ... Quando ... ... decederet. herede ... ... de ... hereditates ... ... formula quae in ... ... substitut. ... ... si primus heres non erit 2. heres esto: adjicit ... ... Statuit a 2° herede ... ... heredi ... in 1° gradu ... ... , si heres non erit. ... ... heredes 1. gradus ... ... deficiente ... ... institutioni. adjiciens, et ... ... relinquere ... ... omnino ... ... derat ... ... 3. ...

(2)

...

ff. de vulg. et pup. l. ex. facto. p. 30 ... ut ...
in ... ... testatore ...
volens ... in l. ... 39 § fin. ff. de sub. ...
c. ... Dec. ... l. ... 13 ... 19. et
... si ... liceret ... loco ... ...
examinauimus ... certissimum ... in specie ... ab omnib.
...
...
...
... in l. ... 151 ff. de V. S. ex ... instituti
... reddatur ... filio 39 § ...
ff. de vulg. et pup. heredes instituti ...
decesserunt, et nihilominus ... tanquam sub
stituti ad hereditatem admittuntur ... secundo gradu vocati
fuerunt ... manifeste ... adesse substituti
... heredibus institutis hereditas delata
fuerit ... illud ... modo ... iudicio testatoris ... gradu
reperiatur institutus

23 ...

... in ... ...
... quia ... ...
... heredibus institutis ... eodem gradu,
Vocatus ... substitutus ... admittere ...
... in l. quo herede 41 ...
ff. de vulg. Ubi ... testator ... 1. et 2. ...
heredes ... ... substitutione ...
2. ... 1. ...
... 1. et 2. heredes ... si 1. heres ... 2.
... heres ... 2. institutus substitutusque ...
... 3. ...

hoc

ex [illegible] se [illegible] d. Marcello [illegible]

Papiniani [illegible] ut observant Cuj. in recitat. ad L. 1.

[illegible] si filius 27 ff. de Vulg. et Donel. lib. 6 comment.

c. 24 aqua in discedit Ubald. ibidem lit. F. licet ali

quid adjiciat Cuj. ipse lib. 6 [illegible] ind. [illegible]

ff. de Vulg. — [illegible] dubitat [illegible] quanta

hereditatis portio debeat ad substitutum [illegible]

[illegible] portione [illegible]

[illegible] substitutionis

[illegible] ante [illegible]

[illegible] rebus humanis [illegible]

[illegible] ut [illegible] quorum [illegible]

[illegible] hereditatem adeunt [illegible]

[illegible] et respondet [illegible]

tercio [illegible] substituto [illegible]

hereditatem [illegible]

ad substitutum [illegible] sive ante substitutionem, sive postea [illegible]

[illegible] pertinere, [illegible] decisioni

(ut omnes scriptores [illegible] quorum [illegible] in

[illegible] examinabimus) [illegible] 1° et 2° heredibus

scriptis [illegible] 2° gradu [illegible] 1° [illegible]

[illegible] 2° 3. [illegible]

[illegible] ad [illegible] portionem [illegible]

ti rationes [illegible] intelligi [illegible]

et hoc [illegible] substitutum [illegible] in

utraque parte substituti [illegible] substitutum fuisse

[illegible] 2° [illegible] ff. in [illegible] 27 [illegible]

in utraque parte Semproniu substitutum est [illegible]

docent Cuj. Donel. et Ubald. [illegible] et [illegible]

(licet a iij scriptores dissentiant) quos [illegible] et [illegible]

3

in ferius accendenda, diversis in quibus adstruitur Cuj. facile fulciri
ex l. si pluribus §. ff. de suis et leg. l. quibus §. §. in l. sub
dei patrimonio ... ff. de acquir. hered. Imo
iuribus cumuli instituti heredis Coheredique substituti nomine
per substitutionis ius et eam ad heredes suos transmitti non
... adhuc portionem ex causa substitutionis potuit agnoscere
et ex ... sequenti nisi prius qua decederet Coheredis portio
ex causa substitutionis ipsi delata fuisset. Tres autem Papin.
ind. Coheredis ... ex ... fuerit etiam ante delationem
per substitutionis causam, et ius ad substitutum transmi
in qua difficultate moveri Jacob. Cuj. lib. 12 observ. c. 11 ex
... d. l. si ex pluribus §. ff. de suis et leg. ...
... adiacnouum pertinere ad eosmet ... Juliani,
et Papinia. ... ius antiquum, id est ius accrescendi tanquam modo
inter legitimos heredes usque ad ... gradum ... deferebat
in ceteris autem heredibus ... fuerat, et derogatum
... ill. Ampliantur alii quos referre et sequitur ...
... lib. 3 ... subst. de acquir. hered. cap. 6. ex n. 5
cum sequentibus.

n. 26.

Deinde sequentes considerationes adversus Papinianum
ff. adstruit Cuj. ut secundus substitutus ad utramque here
ditatis partem ... substitutum quoque coheredis vocatus
intelligatur facti necessitate, et ... testatoris voluntas
quae ex ... ipsius, et substitutionis forma colligi possit
... colligatur facilius requiritur ... 1.um et 2.um intelligatur
et quod secundus primo substituitur sic et postea tertius sub
stituitur 2.o ... formula institutionis et substitutionum
posita ... et ordine scriptura 2.us ... institutus ...
utramque hereditatis partem vocatus intelligitur ad alteram
iure institutionis ad alteram vero iure substitutionis et

partes et pue

antequam conditio prioris substitutionis adimpleatur aut post
ipsius impletam mortem decedat ita Oberbaro Expedita jura ex q.
monantibus in immediatae add. l. si Titius 27 et lib. 6 Neapoli
Pauli. eod. Bononiensis 41 ex prima Trilodia Daniel. con. man.
24 et 10 ead. Baldus tit. ff. Et conclusio tradita a Joberno
in ex posit. d. l. 27 et lib. 41. Duaren. adversus c. 10
column. 2 ... Chalcius ins. et si ex dispariter
2 inst. ... Valent. lib. 3 ...
... Co. 6. ...

No 25

Dubitari ... Papinia.
... ac Oberbarone sup.
tradita ... substitutionis ... admitti ...
... substitutionis admitti ... licet instituto ...
... nunquam ... aliter ... quasi
... considerat ... Cons. Papin. ... Cons.
... nullo modo potent ... Per ... considera
... Dominus ...
... vocatus ab ... partes ... admitti ad
... tanquam ... substitutus quoniam
... admitti ... necessariis ... instituti
... secundum ... substitutus ...
... ante mortem ... substituti ... pars sua ...
... substitutionis ... conditione, et ...
ex causa substitutionis ... substituto ... dixerat
... decedere
... secundus substitutus utrique partes ...
devolvuntur ita considerat ...
... habebat 47 ...
... substituti ... intelligi et ...
... admittendum ... veritate

C

in ...

Sup. [illegible] 28. tt. 0.

Capitulum inexplicabile dictum levius ponderis [illegible] difficiliorem, tanquam partis Papiniani, quam ulteriori loco explicabimus, continendum [illegible] 16. 3. illud sub titulo de acquir. hered. l. 6. cum [illegible] sequentibus.

Nº 27.

[illegible] substitutionis [illegible] [illegible] institutio actu et potentia hereditas delata sit [illegible] deferri potuerit licet [illegible] prior [illegible] inutiliter [illegible] a principio [illegible] institutus [illegible] [illegible] [illegible] [illegible] [illegible] solemnitates quae in [illegible] electione debet intervenire [illegible] a [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad hereditatem [illegible] volentes [illegible] [illegible] [illegible] sit, et jure substituti admittatur. [illegible] regula generalis observandae [illegible] sufficere ad substitutionem [illegible] secundo loco aliquem ad hereditatem [illegible] si voluntas [illegible] [illegible] [illegible] ut secundo gradu tanquam substitutus admittatur = Exempla observat. [illegible] [illegible] hac institutionis formula [illegible] heres esto Sempronius heres esto licet Sempronius 2º loco institutus [illegible] [illegible] institutio secundo loco facta dici [illegible] [illegible] prior tantum modo [illegible] habere [illegible] [illegible] in simili [illegible] scripsit Celsus in [illegible] [illegible] [illegible] servus 1º loco et a [illegible] servus 2º loco heredes scripsit [illegible] de hered. inst. nihil omninus [illegible] [illegible] Sempronium [illegible] [illegible] institutum et simul [illegible] 2º gradu ad hereditatem admittendum [illegible] quoniam licet [illegible] [illegible] formam [illegible] [illegible] [illegible] [illegible] Sempronium [illegible] [illegible] tanquam 2º [illegible] [illegible] [illegible] ad hereditatem vocatus (quam [illegible] [illegible] [illegible] [illegible] definitionis [illegible]) [illegible] tamen [illegible] [illegible] [illegible] Sempronii insti

tuto

[illegible] sequenti sensu [illegible] 3.ª 2.º substitutus, ad utramque partem vocatus intelligitur [illegible] ponunt [illegible] [illegible] cohaeredis [illegible] [illegible] l. [illegible] 3.º [illegible] de vulg. secundus substitutus [illegible] 3.º [illegible] ad haereditatem vocatus ad utramque portionem vocatus intelligitur licet substitutus 2.º [illegible] secundus haeres [illegible] substitutus [illegible] dubitandum [illegible] substitutionis [illegible] [illegible] quae [illegible] ulteriori gradu [illegible] [illegible] et [illegible] substitutione venientes et substitutus jure substitutionis admittendus fore [illegible] haeres secundo [illegible] ulteriori gradu ad haereditatem vocati licet haereditas [illegible] [illegible] primi substituti [illegible] substituto [illegible] secundus [illegible] delata sit, neque [illegible] [illegible] [illegible] adaequatam [illegible] [illegible] substitutus ad utramque partem haereditatis absque [illegible] admittitur [illegible] cohaeredis [illegible] [illegible] licet prior substitutus [illegible] [illegible] substitutionis [illegible] cohaeredis [illegible] sibi delata [illegible] [illegible] n.º 11 [illegible] [illegible] n.º 20 et 21 [illegible] substitutionis [illegible] [illegible] ut substitutus admitti possit [illegible] quod haereditas [illegible] delata sit [illegible] §. [illegible] [illegible] ab omnibus 107 §. [illegible] quidam [illegible] cum aliis pluribus [illegible] adducit [illegible] doctrina sicut locum obtinet in persona [illegible] [illegible] [illegible] [illegible] locum quae obtinet in persona secundi substituti [illegible] [illegible] substitutio [illegible] licet substituto priori haereditas delata [illegible] et [illegible] substitutione [illegible] secundus [illegible] ad haereditatem admitti ex d. §. 1. si [illegible] [illegible] [illegible] [illegible] intelligendus [illegible] cohaeredi 4.º [illegible] [illegible] quas movet [illegible]

& . it heres institutus respectu pupillaris successionis na... aequipiis substitutus bona pupillaria nulli alii deferri aut acquiri poterant ex l. Papinianus 4. § i. neque impuberis ff. de inoff. testam. et ... hoc te. l. Papinianus 4. § i. neque impuberis ff. de inoff. ciarotte, et q. magis urget similiter filio impuberi exhere dato aliquem substituat substitutus quidem et ... adjuvit speciem specialem substitutus dicitur, et ita a Doctoribus apellatur. Certum est autem in pupillaribus tabulis hereditatem ... pupilli ... expirare substitutio deferendam, et solum ... est, quoniam non datur aliqua institutio in tabulis pupillaribus quae substitutionem precedat, ergo magis et pupillaris substitutus exheredato filio designatus nulla tenus succedit ut secundus et indefectu alterius heredis instituti cui primo gradu hereditatis delata fuisse aut defferri potuisse dicere possimus, quia quidem certum est non licet de paterna hereditate loquamur ipsi exheredato filio deferri bona paterna non potuisse ut saltem respectu ipsius filii substitutus pupillaris possit aliquatenus secundo gradu ... caret tali ... substitutus tanquam exheredato filio datus ipsi pupillo immediate succedit ex l. ... 6. ff. ... igitur ex praedictis videretur non obscure in terminis dicti dubii substitutionis qualitatem secundae heredis institutio, et talem tanquam proprie loquendo posse reperiri licet tanquam primo et non tanquam secundo autem secundo gradu ad hereditatem ... cui difficultati succubuit Gilquen. in rub. C. de impuberum et aliis substitutionibus n. 1.

n. 29.

Ceterum ex doctrina ... observat. sup. tradita vere affirmari utramque substitutionis ... ex heredato ... et ... do secundam institutionem ... et tanquam secun-

3).

Oper.

ratio imposita fuerit sicut testantis judicium videns sive ordinem succesionis animaduertens in 1° gradu facta, nec institutio 2° ut judicari, ex quo semper non possit si nec hereditas deferri simul eodem gradu et eodem tempore utrique hereditas deferri, et pariter utroque adire hereditatem admitti ex l. 2. § de hered. A. l. 4. § sequenti ... sit et scriptus § de bon. poss. secund. tab. l. ... A. l. ... 178. 1° l. quo loco ... heredes ... de hered. inst. ... inter ipsos tanquam coheredes partes ... sufficient ... 78 ... 87 ff. de leg. 3. l. ... 142 ... in specie autem dicitur q solvendo ... Caa solus ... qui primo loco fuit heres scriptus aa hereditatem admittit ex ea ... patrisfam q solvendo ... tantum modo ... herede ... libertatem et hereditatem ... creditores sequi possit et is solus ... q priori loco fuit scriptus ... docent ... 42 l. ... 43. § ... 87 l. ... 85 § 1° ff. de hered. inst. § 2° ... ... Ad ... n° ... adeund. tt. ... 2 n° 51 ... ad ... Fab. ... 2 ... Fab. ... 2 ... 2.

Ex eisdem principijs

aliud argumentum, et difficilius ... adversus ... substitutione ... expendunt, dissoluendum est: quanuis ... per substitutionem pupillarem ... mediate substitutus ... succedat ... ad ipsius pupilli hereditatem pupillariter tabulis pater substituerit ... pupillari substitutus

N° 28

C

1

4. ut nunc instituens respectu pupillaris substitutioni man
ancipiu substituens bona pupilli tam ea quae multi alii deferri
aut acquiri potuerunt ex l. Pluribus ... ad substitutos
... hoc ... Papinianus ... neque in puberis ... Feinoti
... et quod magis urget, si nostro filio impuberi exere
dato aliqui substituat substitutus quidem et ... nus
adjuris effectum spectat substitutus dicitur, et ita a Doctores
appellatur certum est autem in pupillaribus tabulis hereditatem
... pupilli ... substituto defenendam ... et solum
... quoniam non datur aliqua institutio in tabulis
pupillaribus quae substitutionem precedat, ergo magis e
pupillaris substitutus exeredato filio delegatur nulla
tenus succedit ut secundus, et indefectu ... herede
instituti cui 1° gradu hereditatem delatam fuisse aut deferri
potuisse dicere possimus, quoniam ... certum est licet de patris
hereditate loquamur ipsi exeredato filio deferri bo
na paterna non potuisse ... respectu pupilli filii subs
titutus pupillaris non ... aliquatenus secundo gradu ...
... substitutus tanquam exeredato filio ...
... pupillo immediate succedit ex l. Cius. 6. ff. ...
Utique ex praedicta ... non obstante ... dari
substitutione quaestione secundum heredis institutio, et talis
... loquendo posse reperiri licet tanquam 2.
et non tanquam 2. aut secundo gradu ad hereditatem ...
... difficultati ... Gilquen. in rub. C. de impuber.
et aliis substitutionibus n. 1.

n° 29.

etenim ex doctrina ... observat.
... veri ... tanquam substitutio ...
... exeredato ... et ...
de secundo institutione ... et tanquam secundo

gradu

... 3 ...

... locatq. ... a. hereditatem admittendu ...
et docet ... in ... hereditatis ...
instituendis, ... quis ... filiu
... tabulas legitime adque
... sibi faciat, et heredes
qui sibi succedat ... instituat simul quae desiderant ut
... substituat. l. 1. ... l. 2. ... 2
... l. ... capiuntur ...
... ut ...
... lib. ... inst. de pup. subst.
... in ... adjun ... partit ...
... in hac ... de ...
... part. ... 10 ... in ... 25
... quod ... desiderat ...
desiderat ... parent ... sibi faciat ... alius ...
... et ... hereditatis ...
... necess ... praecedere ... nepotes ...
... permittit ... sicut ... filio ...
... faciat pater ... pupillaris ... habebit ...
... authoritate Juliani ... Imperatoris ...
... ind. 1. 2. § prim ... ...
... pupillare ... Iustiniano
... l. ... inst. de ... aequidens
... P. subsequi ... pupillaris ... § ...
quae ... ponunt ... refert ...
...

Et ... ind. 2. § ... instituas ... institutionis ... 30
... in ... 14 ann. decesserit ... reversus ...
inde subiciat ... reverso ... institutios

C

... cet

[illegible] ac iuxta script. [illegible] tt. prout prius Ordinauerit, et deinde sibi tt. [illegible] ut [illegible] ibi ii [illegible]
[illegible] licet iuxta [illegible] tt. [illegible] [illegible] manifestis
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] ibi prius [illegible] sibi qui debet [illegible] scribere [illegible]
[illegible] [illegible] Ordinis [illegible]
[illegible]
[illegible]
[illegible]
[illegible] 6. 6. [illegible] 29, [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] pater scribere [illegible]
[illegible]
[illegible] inuenies [illegible] ordini, [illegible]
[illegible] tt. [illegible]
[illegible]
dicendo ind. [illegible] in casu quo pater tt. [illegible], deinde
[illegible] fecit [illegible] ind. [illegible]
[illegible] intelligendum est [illegible] pater [illegible]
[illegible] continenti, et Unico [illegible] filio
tt. [illegible] in eadem script. [illegible] tt. [illegible]
[illegible] ordo Scripturae [illegible] tabulae pupillares

tt.

tt.° paterni praecedente, nec subsequenti ita exponit, et Ioannis
(Utrumque §.° Oliuald. d. lib. 6. c. 1. 7 more [illegible] tit.° 25 lit. S

Heridiat

ctis, ut pupillare, tabulis substituto, i. paternas tt.° heredi
tatis adit. Giron. [illegible] d. l. 2 § [illegible] ff. de vulg. d. l. 2 Papini
anus 8. § [illegible] negue [illegible] ff. [illegible] unde
quamuis duae diversae sint partis, et pupilli hereditates
dicta q. patrimonios tt. tamen paterni, et pupillare ut
pote ex eadem voluntate pendentes, [illegible] iudicio, [illegible]
Uno eodem tt.° [illegible] licet duarum [illegible]
hereditatum pupilli [illegible] l. 2 § prius 4. l. [illegible] filij 20
l. eius plures 3 & § fin. ff. [illegible] l. 2 § illud 2 ff. de [illegible]
[illegible] act. [illegible] 9. [illegible] inst. de pupillari
substitut. [illegible] substitutus filio [illegible] siue
expendato siue substituto, [illegible] heredes sit, et [illegible]
pone nuncupari [illegible] ad substitutionem pupillarem [illegible]
[illegible] pater [illegible] sibi tt.° [illegible] et heredes instituat
esse [illegible] hereditatis paternae [illegible]
[illegible] q. licet in eadem [illegible] in tt.°
et [illegible] 2 [illegible]
[illegible] Vocatur ad hereditatem
paternam in 2° vero ad hereditatem pupillarem [illegible]
unde [illegible] q. licet expendato [illegible]
circa pupillarem hereditatem [illegible] substantiae res
pectet institutus, et [illegible]
[illegible] substitutus [illegible]
nus [illegible] in eodem tt.° prior [illegible] institutus he
redis paterni [illegible]
institutio quae pupillaribus tabulis [illegible] secunda
institutio est, [illegible] ideo [illegible] substitutio appellatur. Siue

substitut[illegible]

substitutus debet quipiam heres ipse qui pater sibi instituit sive alius quilibet ad pupillarem hereditatem, Bart. & prag. in l. 1. § sed si haeres 2° puncto et alii n° praecedenti ff. de vulg. ita exponunt Iohan. adversus eius. Anacl. n° 1 [illegible] de stat. lib. 2 [illegible] 6. q. 2. et ex pluribus [illegible] Intimidus de substitutionibus cent. 1. q. 2. n° 25 [illegible] eadem c. 3. q. 2. n° 21, et addit in l. de vulg. in rub. n° 40.

Nº 32

Ceterum ad [illegible] q[illegible] tradita sequitur [illegible] intimidus [illegible] [illegible] privilegio militari [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ep. l. [illegible] 2 § 4 ff. de [illegible] l. in [illegible] 15 § 1 [illegible] militari [illegible] [illegible] milit. et nimium omnes [illegible] non [illegible] [illegible] designat [illegible] institutionis potius in [illegible] substitutionis, et certo certius necnon [illegible] hereditate pupillari. [illegible] in eodem [illegible] [illegible] milit. [illegible] [illegible] institutus aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] hereditate pupilli secundum [illegible] [illegible] substitutus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] gradu [illegible] [illegible] certus [illegible] [illegible] [illegible] [illegible] sibi [illegible] [illegible] [illegible] [illegible] [illegible] heredem [illegible] [illegible] 2° gradu [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pupillariter [illegible] [illegible] n° praecedenti [illegible] [illegible] [illegible] [illegible] [illegible] substitutus secundum [illegible] [illegible] [illegible] [illegible] hereditate [illegible] heres 2° gradu [illegible] [illegible] [illegible]

Fiz substituere a vita a jure suo appellat.

Respondebu[n]t

33

uti jure tali suo expense, si animadvertas, milites ex hoc pupillariter substituit aut tibi omnes [illegible] in [illegible] si [illegible] expressato, extraneus substituit. Unde heres [illegible] ex [illegible] remanere. Quoniam eo casu [illegible] inveniri. [illegible] milites et pagani atque [illegible] impuberi substituere [illegible] appellatur [illegible] substituit ut sibi succedat [illegible] omnes substituere pupillari [illegible] privilegium [illegible] substituere ex [illegible] ut [illegible] adiicimus n. 31. [illegible] in eo casu [illegible] in [illegible] decisis [illegible] in [illegible] ubi [illegible] hereditas, [illegible] decisis [illegible] primo sibi [illegible] secundo [illegible] accidenti [illegible] hereditati [illegible] ut secundo [illegible] vero [illegible] substitutus [illegible] primus et secundus [illegible] hereditate [illegible] ut substitutio [illegible] substitutio [illegible] hereditatis [illegible] ubi [illegible] ex [illegible] impuberi [illegible] primus et secundus [illegible] tantummodo heres institutus [illegible]

C d.

ni ei omnes in iure fu. substitutus ex eae recanai ima
tue quia miles q. non posset etiam acere, et fili expurlare
et extraneus heredes, necnon etiam non recte censetur tamen [illegible]
primo loco, et ordinem heredes pupillari [illegible] expressa d. l.
tm. 3. [illegible] 8. § [illegible] de tm. eod. l. 1, sciendum
eum 3. et tacite [illegible] institutionis non necne [illegible]
testam. [illegible] abrogans introducit [illegible] pupillariter
vocari [illegible] ille [illegible] miles [illegible] substitutum
conter [illegible] [illegible] [illegible] 23 [illegible].

n.° 3-1.

Militare

privilegium [illegible] addidimus non [illegible]
[illegible] in notabilis [illegible] adhuc [illegible] nascie
signans [illegible] apertum, quae [illegible] admo
dum reddit ex [illegible] § fin. [illegible] mil. [illegible]
[illegible] testatorum [illegible] tm
[illegible] annos [illegible] tempore [illegible] non
[illegible] militari privilegio [illegible] certum e, [illegible]
[illegible] 19. [illegible] 4. [illegible] 41 [illegible]
[illegible] secundum heredes [illegible] tempore
[illegible] sub[illegible] [illegible] in d. l.
miles 41. in [illegible] ad
ann. 10 [illegible] non [illegible] mil.
[illegible]
ad hereditatem [illegible] agere [illegible]
[illegible] ad certum tempus instituto [illegible]
[illegible] [illegible] [illegible] re
[illegible] non [illegible]
[illegible] [illegible]
militare [illegible] heres [illegible]
tempore ad hereditatem [illegible] retineat [illegible]

aug. [illegible] f. 4 (?)

15

n° 35

ab [illegible] nec [illegible] nisi [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
ac [illegible] solutionem tenetur quasi a[illegible] expresse [illegible]
[illegible] fuerint que [illegible] [illegible] et [illegible] solutio [illegible]
[illegible] [illegible] [illegible] [illegible]

Ex quo [illegible]
[illegible] [illegible] [illegible] [illegible] consideratio [illegible]
[illegible] [illegible] a [illegible] relicto [illegible]
[illegible] tacito [illegible] [illegible] nisi ex speciali [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] nostri
[illegible] [illegible] [illegible] [illegible] que [illegible]
[illegible] omnimodo [illegible] teneri. Et licet [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] 3. [illegible]
[illegible] [illegible] 11 [illegible] 15 [illegible] 2. [illegible]
[illegible] [illegible] [illegible] [illegible] 4. [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] 13 [illegible]
[illegible] [illegible] [illegible] 24 [illegible] [illegible] leg.
[illegible] [illegible] [illegible] [illegible] [illegible] aut
[illegible] [illegible] [illegible] [illegible] tempore
[illegible] [illegible] aut [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] quatenus
[illegible] [illegible] 2. [illegible] tempore [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] principio [illegible] [illegible] [illegible] licet [illegible]
[illegible] 14 [illegible] [illegible] [illegible] [illegible]
[illegible] substitutus [illegible] [illegible] que [illegible] [illegible]
[illegible] manifeste [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] anno [illegible] [illegible] nemine substituto dato [illegible]

ideo et. si accenerit secundus heredes ex tempore omilitiae ad hereditatem vocatus sub titulo quasi ei de ut factus quidem ad heredem priorem quasi adiret tempus quo fuit institutus [illegible] substitutus vulgariter fit ut infra demonstrabimus substitutum in me vargis, et ab intestato ita nemcugariam omnino et ut observant scriptores in terminis referendi

Ne substitutus sit substituti omnia ipse patris itaut legata ab instituto relicta solvere teneatur ... et ipse ... exponemus

71.
30.

Dicimus tamen pondus quoniam sunt transact. de his ... Lib. ... in § 17 Testamentarium et substitutionibus ... in rem innuis de impuberi et aliis subst. n.° 9. et pluribus de ... aliis quae ... et expositionibus ... et enoch ... tract. de plurimis

A. 4 plurim. n.° 8 ex n.° 32 et seqq. Dualem in ... ad ... l.° 1 ... tit. ... quo ... in rub. in ... ex n.° 32 quo ... omnibus traditionibus et expositionibus omitti ... et perspicuitate ... ind. ... 19

§ ... hoc ostenderet ... animadvertendum est ... heredis certo tempore instituti de quo loquitur ... heredis priori heredi ... institutus ... simul ... hereditas et ... tempore ad successionem admitterentur, et ... l. ... 14 ... § 1.° ... 2 ... de ... § de ... 4 ... § ... admitti ex ... tempus ... et ... tempore ... heredes ... 41 ... ponimus et ...

...

[illegible] [illegible] [illegible] [illegible] [illegible] ad here[illegible]
[illegible] admitti, nec [illegible] [illegible] [illegible] medio
illo tempore [illegible] [illegible] [illegible] [illegible] hères
hereditatem [illegible] addire [illegible] [illegible] sive [illegible] repudiaverit
[illegible] ad [illegible] [illegible] [illegible] admitti [illegible] tempus
[illegible] [illegible] ad hereditatem vocatus [illegible] [illegible]
[illegible] illo tempore militis hereditas eodem modo [illegible] [illegible]
et acquiritur quo deferretur similiter [illegible] [illegible] [illegible]
[illegible] prioribus repudiantibus hereditatem adiverit [illegible]
[illegible] militi ab intestato succedunt erant ad hereditatem ac
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] medio illo tempore [illegible] ex militari privilegio
et voluntate [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] in [illegible] [illegible] mil. [illegible]
bant [illegible] [illegible] laudati

[illegible] animadvertit. infertur si
milites utrumque dicebamus [illegible] [illegible] [illegible]
[illegible] licet [illegible] [illegible] [illegible] [illegible]
[illegible] nihil [illegible] [illegible] [illegible] vulgare [illegible]
n° 10 [illegible] [illegible] [illegible] vulgaris [illegible]
[illegible] [illegible] ad hereditatem [illegible] [illegible]
aut adire noluit [illegible] hereditatem [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] ex [illegible] in [illegible] [illegible] n° 10
[illegible] et de [illegible] et aliis [illegible] in [illegible]
[illegible] [illegible] licet prior heres [illegible] [illegible] tempore
institutus hereditatem [illegible] et [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] removeri [illegible] tempore [illegible] [illegible]
ad hereditatem admitti [illegible] modo quo admitteretur [illegible]

nere [illegible] n[illegible] [illegible] miles 41 [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] tempus [illegible]

[illegible] [illegible] [illegible] tempore [illegible]

[illegible] [illegible] [illegible] 34 [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] secundus [illegible] [illegible] [illegible] prior

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] tempore [illegible] [illegible]

[illegible] [illegible] [illegible] 41 [illegible]

[illegible] vulgo [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] militaris [illegible] [illegible] [illegible]

[illegible] privilegio [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] n° 32 [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] hereditatis [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible]

n° 38

[illegible] pag.

venienda a iuribus in [illegible] [illegible] [illegible] 195. [illegible]

[illegible] maximi [illegible] tutum est legata a priori instituto relicta, et

[illegible] iure teneantur [illegible]. l. 4 [illegible] licet long. 14 [illegible]

[illegible] [illegible] l. [illegible] cuius difficultas ex [illegible] singu-

[illegible] ingeniosa [illegible] [illegible] in [illegible] Donatione [illegible]

[illegible] [illegible], Dimovendo [illegible] [illegible] iudicavit, a [illegible]

considerare [illegible] [illegible] [illegible] radicem [illegible] [illegible] at [illegible]

[illegible] [illegible] pag. anno 1. 8 [illegible] [illegible] [illegible] praetermissis

[illegible] [illegible] [illegible] [illegible] vigente, posteriorem heredem

in specie [illegible] [illegible] [illegible] 19 [illegible] [illegible] prioris heredis [illegible]

[illegible] [illegible] instituti [illegible] [illegible] substitutum militarem ex qua

animadvertit facile [illegible] legata a priori instituto relicta capitarie

teneri dispositio namque Imperatoris [illegible] cuius mentio fit

[illegible] [illegible] de eo. l. ut legata ab instituto relicta a substituto

debeantur quasi ab ipso [illegible] [illegible] tantum modo pertinet ad

substitutum vulgarem [illegible] [illegible] portio [illegible] acquisita

[illegible], et acquiritur [illegible] ad coheredem [illegible] iure accrescendi [illegible]

[illegible] pars [illegible] [illegible] acquirere noluit [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] tenentur ne testatoris

dispositio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] coherede

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] instituto [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] in [illegible] [illegible] [illegible] l. 2 [illegible] [illegible] in

[illegible] ea. Necessario [illegible] [illegible] tacita [illegible] [illegible] [illegible]

Imperatoris rescripto ut [illegible] authoritate [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible], et [illegible] [illegible]

[illegible] [illegible] in [illegible] illius [illegible] tanquam substitutus vulgaris

[illegible] ad [illegible] [illegible] [illegible] [illegible] acquisi

[illegible] [illegible] testatoris iudicio admittendus est. Unde ne [illegible]

fidei commiss. legatorum datis ac commodum hereditatis heredis cuius res
[illegible] et occasionem [illegible] similia, ubi sunt diversa atque fuerant res
[illegible] quadringenta 2. [illegible] ad [illegible] 13 [illegible]
[illegible] Hon. X. in [illegible] 4. [illegible] et [illegible] laudatos supra
n° 32 [illegible] Ant. [illegible] 4 [illegible] 15. [illegible] 2 [illegible]
7. [illegible] 10 observ. 52 [illegible] observ. 32 [illegible]
[illegible] 2 [illegible] resolut. § 11 n° 28 [illegible]
[illegible] 59. Ant. Tom. [illegible] 12 n° 30. [illegible] 8
[illegible] 29 et ibidem [illegible] Valenz. [illegible]
[illegible] tract. 2° p. 4 n° 10

Ceterum [illegible] Anton. [illegible] et
[illegible] tacita repetitio non extenditur ad eum casum quo heres
institutus hereditatem acquisivit et post acquisitionem ad alterum [illegible]
hereditas semel acquisita [illegible] in substituto pupillari
[illegible] heres extitit paternae hereditatis [illegible]
[illegible] ad hereditatem admittitur [illegible] in transumptum
[illegible] decessit [illegible] legata [illegible] substitutio [illegible]
[illegible] neque [illegible] substituto [illegible]
[illegible] nisi eo casu [illegible] in instituto [illegible]
[illegible] in [illegible] 9 § 1° l. [illegible] 52. [illegible] 52
§ 1° [illegible] 53 [illegible] l. [illegible] 13 § [illegible]
[illegible] 93. [illegible] principium [illegible]
[illegible] substitutus pupillaris in secundum casum [illegible]
[illegible] legata aut fideicommissa solvere quae a [illegible]
[illegible] hereditas [illegible]
[illegible], licet pater in tabulis [illegible]
a [illegible] et coheredibus [illegible]
[illegible] sicut [illegible] 52 [illegible] 81 [illegible]
3. l. [illegible] 113. § [illegible] 88 § [illegible]
1 § [illegible] 2. [illegible] in substituto militari [illegible]

Area [illegible]

ugt. [illegible] in d[illegible] miles [illegible] in [illegible] d[illegible] cetti mi in qua est
militari privilegio postquam prior heres ad certum tempus ins
[illegible] hereditatem acquisivit [illegible] repudiatione
aut in capacitate ingreditur dum heredes abstentione [illegible]
[illegible], posterior heres ex tempore institutus, transiatur
tempore priori [illegible] fit. [illegible] hereditatem acquirere quem
antecedenter alteri fuerat acquisita esset. [illegible] miles [illegible]
[illegible] mi [illegible] [illegible] [illegible] [illegible] vertitis
[illegible] nisi [illegible] mi [illegible] [illegible]
[illegible] ut [illegible] [illegible]
[illegible] necess[illegible] [illegible] [illegible]
[illegible] cod [illegible] 3 [illegible]
[illegible]
[illegible] 38 [illegible]

n. 40

[illegible]
privatis [illegible] [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

C.

[illegible] ..... [illegible] quasi ..... [illegible]

[illegible] emitis [illegible] admittatur [illegible]

[illegible] institutionis [illegible] ....

..... [illegible] ....

[illegible] in personam ipsius

firmant et debere imponere [illegible] hereditatis acquisitionem ex qua

[illegible] quasi traditionem [illegible] ad [illegible]

[illegible] Ex. ..... 41. [illegible]

..... [illegible] l. [illegible] separationis [illegible]

[illegible] neque [illegible]

exquari [illegible] traditio et suppositio; neque

necessaria, neque [illegible] illorum subti

tuere adiri [illegible] ubi institutio [illegible]

suppositio [illegible]

[illegible]

Dextatio [illegible] tanquam legatum tanquam aes alienum [illegible]

[illegible] in l. [illegible] .11 [illegible]

[illegible] ex [illegible] hereditatis [illegible] ex

[illegible] ut aes alienum quodlibet debeat [illegible] ad [illegible] expo

sitionem [illegible] Leg. To. 29 [illegible]

[illegible] 3. infin. et col. [illegible]

N.° 41

Praemissa [illegible] exponitur [illegible]

[illegible] firmatam [illegible]

[illegible] decedat [illegible]

[illegible] legatum Expositione substitui non debere [illegible]

[illegible] Ceterum si [illegible]

[illegible] legatum firmentur [illegible] ab hereditate

paterna se [illegible] substitutio [illegible]

[illegible] demonstrationis [illegible]

[illegible] de fiere necessarium est [illegible] hereditatem non acquisivit

7

A. Quia [illegible]

[illegible] patre, [illegible] ad institutionem [illegible] verbi, [illegible] ad [illegible] aut filio [illegible] legata [illegible], [illegible] pupillari [illegible] substituto [illegible] instituto [illegible] legatarii [illegible] ex [illegible] nemo [illegible] legatorum: nec igitur ex hoc accidenti testamento [illegible] [illegible] substitutus legata [illegible] necessario intelligendo in [illegible] legatos [illegible] nec ille patri heres extitit [illegible] [illegible] heres extiterit [illegible] [illegible] patri heres extiterit [illegible] [illegible] substitutione [illegible] [illegible] de [illegible] a primo [illegible] [illegible] [illegible] pupillari [illegible] a filio instituto [illegible] [illegible] 100. a substituto [illegible] 200. legatarius [illegible] [illegible] [illegible] legatis [illegible] [illegible] legatarii duobus [illegible] [illegible] legata [illegible] [illegible] legatorum [illegible] [illegible] legata [illegible] [illegible] [illegible] [illegible] [illegible] legata [illegible]

[illegible] [illegible] [illegible] et
[illegible] accedat a substituto in [illegible] a primo
gradu [illegible] [illegible] elegans
[illegible] semel [illegible] judicandus e
[illegible] substituto [illegible] [illegible]
[illegible] similiter [illegible]
[illegible] legatarius a substituto [illegible]
[illegible] in quantitate [illegible] in modo levandi [illegible]
persona legatarius [illegible] a [illegible] dissimilitudine
a substituto [illegible]
[illegible] [illegible] [illegible] [illegible] et ind. [illegible]
32 et ind. q. ergo 93. [illegible] 1°.

N° 42.

Que [illegible] [illegible]
[illegible] militari [illegible] in [illegible]
19 [illegible] [illegible] [illegible]
[illegible] 41. [illegible] modo
Volatus [illegible] ad hereditatem [illegible]
[illegible] [illegible]
[illegible] hereditatem [illegible] acquire
bat [illegible] vero [illegible] poterat
[illegible] posterior [illegible] ab
intestato venientis [illegible] hereditas [illegible]
[illegible] Medio illo tempore [illegible] prior heres
acquirere [illegible] 41. [illegible]
[illegible] casus [illegible] [illegible] adiciendum e nimi
[illegible] heredes ab intestato venientes militis [illegible]
repudiaverunt quo casu [illegible] heredes posteriores ad hereditatem
admitti [illegible] heredi priori [illegible]
[illegible] [illegible] experiemur [illegible]
[illegible] eo demum casu admitti [illegible] substitutum militarem

Uterque tamen

ita ut nec ius sit semper primi heredis prim, et pervenit ad secundum, in secundum [illegible] addit [illegible] sit tamen ut ob id docet, ius in d. [illegible] militis [illegible] [illegible] finitas militare [illegible] legatis a primo [illegible] bene neque ab ipso substituto [illegible] repetitos censeri neque cohereri a primo herede neque substituto vulgari, et deinde [illegible] ad modum hereditatis prioris heredis [illegible] ex tali modo legata [illegible] [illegible] l. [illegible] ad [illegible] [illegible] [illegible] legata [illegible] debeni [illegible] substituto militari [illegible] licet ab substituto pupillari debeantur [illegible] pupillo patri heres extiterit [illegible] [illegible] decesserit modo [illegible] sup. n° 40 [illegible] et substituto [illegible] [illegible] licet enim heres [illegible] tempus institu[illegible] hereditate [illegible] [illegible] prioris heres [illegible] 19 § [illegible] [illegible] heres [illegible] [illegible] substitutus pupillaris heres [illegible] [illegible] [illegible] legatos [illegible] heredis [illegible] in persona [illegible] [illegible] X. [illegible] L. [illegible] [illegible] ad [illegible] [illegible] sup. n° 40

Praeterea quamvis prior heres [illegible] ad certum tempus amisisse institutus hereditatem [illegible] [illegible] in [illegible] [illegible] [illegible] nunc [illegible] [illegible] legata [illegible] secundo herede ex tempore institutio [illegible] licet sup. [illegible] pupillare [illegible] legata ab instituto relicta [illegible] [illegible] hereditate paterna se abstinuit [illegible] [illegible] [illegible] substitutus pupillari succedit [illegible] pupillus patri [illegible] hereditate [illegible] [illegible] omne et [illegible] hereditatis [illegible] substitutus admitti [illegible] [illegible] [illegible] admonisset [illegible]

C

n. 11

... ill. v.

- ni o legata, quere ex eadem parte ius substitutus qui pro ... ab initio universa bona ... legata a pupillo solui debebant ... igitur ... legata ab institutio relicta a ... substitutus ... consentire ex eo ... cohaerede ... substitutus ex iudicio testatoris admittitur ad illam ... portionem ... institutus si hereditatem agnouisset ... igitur bona ... quorum ... legatarius ... relicta ... legata praestare ... l. 2 ... ad Treb. ... militaris non admittitur ad hereditatem ... neque sequitur ... emolumenti illius temporis intra quod prior heres ... in ... ab intestato ... militis.

... omnia bona ex quibus legata a pupillo solui debebant ... sequitur non esse praecipua ... quae legata ... relicta ... cohaerede ... consentire ex eo ... substitutus admittitur ex iudicio testatoris ad illud ... sequeretur institutus si hereditatem agnouisset ... igitur bona ... quorum respectu legata fuerunt relicta ... legata praestare ... l. 2 ... ad Treb. ... de leg. 2. substitutus autem militaris non admittitur ad hereditatem neque sequitur ... emolumenta illius temporis intra quod prior heres institutus ... l. miles ... de test. mil. et ... ex dispositione testatoris non admittatur ad ea bona ... illius temporis ... prior heres fuit grauatus legata praestare, nullo casu secundus heres ... tenebitur nisi ... testatoris ... ex d. l. ... nisi alia voluntas ... ff. eod. ita erudite ... et ... ad ... ff. de test. mil. ... pen.

illi tamen ex ... et ... insurgit

n.o 44

sed ...

formandus q. dispositio militie tot privilegijs pudicita deterioris sit Idictionis quam quelibet alia pagani dispositio nam in substitu.ne Vulgari si heres institutus hereditatem repudiet me Voluntas desficiat legata ab illo relicta quasi tacite repetita a substituto debentur ex tradditis p. q. e. i. ch eiusdem Stringit in substituto pupillari a patre . . . ab ipso in tradictione firmatur si fuit ex eo filius institutus paterna restituit hereditatem ex tradd. sup. in substitutione militari de qua loquuntur nova in l. imprimis § miles 41 l. querebatur 19 § fin. l. miles 41 in dicto ff. de test. mil. l. centurio § . . . eod. tit. licet prior heres Vivat ad certum tempus institutus hereditatem repudiet legata a substituto non debentur ex traddicti . . . non procedit. nunc licet repudi ante priori herede heres posterior ex tempore institutus ad hereditatem admittatur heredes ab intestato Venientes ex De quanto medio illo tempore a priori herede amiliatur fuerat a limitem l. miles 41 in tit. . . . sequens et ut ante quam dies ueniat quo admittitur institutus intestati hereditas defertur ff. de tt. mil. legata autem a priori herede relictas nulla tenus debentur ab heredibus ab intestato Venientibus licet eum a substituto dari hereditatis admittantur medio tempore quo admittendus a . . . ad certum tempus institutus nisi omnium in legata . . . non reliquit intelligantur Nec quid intelligi post crescente ab heredibus ab intestato Venientibus . . . elegantissime Marse. q. Imperatoris rescriptum cuius mentio fit in d. l. licet 15 ff. de leg. 2. tantum modo significatur heredes ex iuditio testantis ad partem instituti et coheredis a quo legata fuerunt relicta post admitti non autem extenditur ad heredes qui ab intestato et praeter testantis Voluntatem ex sola legis dispositione defuncto succedunt nisi clausula Codicillaris Attestatione

f.

adiuiaer

adijicere quod cabeat Dig. a legitimus Dia tract.o relicta se dila adimpleri ut docet ut in lex. qui 14 C. de fidei commiss. Cui adiungenda est alia juxta infinitus referenda Contrilicet sub stituens militaris hereditate mi ubi agnoscat legata a priori instituto relicta deficiente interveniente ipsius repudiatione et consequenter decernit dictione mili tari dispositione quod quilibet alternativa agani quandoque primo herede repudiante neque sedendus heres legatis prefate ex d. l. 19 § fin. dictum mil. neque heredes ab intestato venientes ex eod. obligari posse legata facere responsa judicavi

n.o 45

. Ingruit difficultas Menoch. in tract. d. ipsumque cons. Numa 108. n. 47 et precipue n. 55 d. ip. a legatarius existimauit ex ratione legata ... a substituto militari neque successorum esse ... validitate ut repetita judicante q. si prior heres usque ad certum tempus institutus agnoscat hereditate ipse ... teneretur ... legatariis ex quam ... obligari ut validamus hoc. n. 40 Ubi post additionem defuncto ... obligat. proveniente ex additione hereditatis legata ... ut ... teneretur ut in ... quod dicimus d. n.o 40, et ... in d. l. ... in § ... iuncta l. ... in § ... 12 ... Fabr. ... prior heres ... tempus institutus hereditate ... existimauit Menoch. heredes abintestato venientes legata ... tare teneri ex eod. fructus et emolum. percipiunt illo tempore donec ... secundus ille vocatus ... succedere ... ... nunquam ... militis voluntate, neque legata ... inutilia ... legatarij ... consequi possint ... Abintestato primo si hereditate agnoscat et a venientibus abintestato si institutus ... aliqua causa hereditate

-ig

q. addireni posit qua doctrina admissa removeretur utique et penitus dissolveretur difficultas proposita non autem quandoquidem ex mente Menoch. nullus casus occurrere potest in quo legata non debeantur, et consequenter non est necessarium quod devenia ad ipsorum repetitionem ut a substitutis possint peti = Adcuius doctrinae confirmationem non ineleganter neque insubtiliter adduci poterat l. cum pater § dulcissimis et l. Titia § ab herede ff. de leg. 2 (moetus authoritate) in l. Lucius Titius § ult. in fine ff. de leg. 2) defendi posse cum hodie in omnibus testamentis adiecta intelligi posse clausula codicillaris, cuius ea vis est et authoritas ut legata, fideicommissa, et libertates in testamento relicta etiam a venientibus ab intestato repetita intelligantur ut non ante probabamus ex l. ea quae 14 C. de fideicom. et inferius latius demonstrabimus; et hanc sententiam ante eum defensit Curtius relatus ab Cujac. lib. 7. Obs. Donel. in c. 18 lit. D. nec namque doctrina si vera esset verius suaderet non solum in testamento milit. verum etiam in paganorum testamento legata ab instituto relicta eo repudiante venientes ab intestato praestare deberent ex vi clausulae codicillaris subintellectae tacitae et ex consequenti facilius suaderet Menoch. sententiam. Verum est quatenus existimavit loco superius relato legata ab instituto relicta deberi a coheredibus ab intestato venientibus in specie de qua quaerebatur in § 2. testamenti mil. nam falsum militari dispositioni nil tale inesset ut quoquomodo posset militis voluntas adimpleri =

cetera tamen aiat. + 5

quae Menoch. sententia tantorum virorum pace impossibilis esse est eam antea ex authorit. iam Menoch. Mil. 37. n. 59 et Zamatia ... 62 n. 23 improbaverat Ant. Vere. in tract. de iudicam. art. 2 n. 31. Pennino ... 94. q. ante eum ... in omnibus testamentis clausulam codicillarem adiectam intelligi et ipsum Cuj. refellit Ant. Fab. de error. pragmatic. decad. 36. error. 1. a quo non dissentit Cujacii lib. 7. ... Donel. q. 18 lit. D. et magis est ... ipse lib. ... Pad ... in l.

f

cum ratio

Cz pater 17 in § filius mat. 23 ff de leg. 2 amplectitur [illegible]
hinc clausula codicillaris nunquam intell. supposita intelligi
nisi ex dispositione testatoris adijciatur et aliqz [illegible] ulteriorz
responsio invenitur a nobis referendis predictis [illegible] ut
ipsi certa adinvenire tenseremus exceptio, que indubitabilia
sunt supponamus scienduz e quod licet testator [illegible]
clausula codicillaris adijcere possit qua mediante fideicommisso ab
heredibus ab intestato venientibus [illegible] [illegible]
in l. fina C. de inoff. testam. l. penult. in § fin. ff. de leg. 2. l. ea que
44 C. de fideicom. l. si iure C. de testam. manum. l. [illegible] C. de fideicom.
mis. liber. l. fideicommissaria 23 in § verbis 2. l. generaliter 24.
in § exte ff. eod. tit. in quo casu etiam qui ab heredibus instituendis
ut substitutus vel extantibus [illegible] ab heredibus ab intestato venientibus
oneratur gravari debebunt. quasi testator ab [illegible] discessisset
et principalis aboleret etiam ab intestato fideicommisso [illegible]
[illegible] l. [illegible] 3. l. [illegible] 8 l. ab intestato 10. l. si qui 19 ff de
iure codicill. l. ab exheredato 126. ff. de leg. 1° l. testam.
29 in § sed et 3. C. de leg. 2. l. 2ª in § [illegible] filius in [illegible]
[illegible] C. de leg. 3. l. 2° in § nocauz 5. l. [illegible] 18 l. recusare
.o. in § memini 2. ff. ad [illegible] l. [illegible] c. l. [illegible]
[illegible] l. [illegible] l. [illegible] l. [illegible] 29 C. de fideicom.
[illegible] l. [illegible] 4 C. de codicil. et § [illegible] in st. eod. tit.
et § [illegible] 10 in st. [illegible] hered. [illegible] 25 de
fideicommiss. in § 4 et 5 C. notant communiter scriptores.

subiecto

47

[illegible] clausulam codicillari credita ab heredibus ab intestato ve-
nientibus regulariter gravari debebunt quod prefatione heredes scripti
si [illegible] regulariter [illegible] hoc [illegible] § [illegible]
[illegible] in [illegible] clausula [illegible] ut heredes ab intestato
[illegible] tenerentur ut [illegible] licet apud [illegible] 3

[illegible]

respons. in l. Titia 13 § secundo tit. cui donat acced. d. in l. nec fidei comissa 36 ff. de leg. 3. Utrumque ergo eadem exequens species ē. Titia filiam suam heredem instituit filiumque exhereda[vit], ut ei ipsi exheredato legatum reliquit et in testo. legatis datur ita adjicit, Via ... datum ... Dolo ab omni herede bonorum ... jure ab intestato ... ea evidenter ... fidei eius comitto. Fuerit Titia sub hac dispositione ... exheredatus deinde ... egit et obtinuit ... matris hereditatem ab intestati devoluit matrem ... intestatam ... exitum habet inofficiosi ... querela ex l. Post ... 6 in § ... ff. de inoff. test. l. ... 31 ff. de ...

Nunc igitur quaerunt multi in ... juris ... legitimi ... legata et fidei comissa praestare teneantur ... ipsi ab intestato rogati sint fidei comissa praestare. Et ex Pauli nota respondet Sceb. in d. l. Titia 13 in fin ff. de inoff. test. nec fidei comissa ab intestato deberi quasi a demente relicta, et in d. l. nec fidei comissa 36 ff. de leg. 3 ex Claudi jurisconsulti nota idem Sceb. docet nec fidei comissa ab intestato relicta deueri quod relicta fuerunt ab eo cuius testo per inofficiosi querelam defecit quod creditur quasi ... test. ... potuisse atque ideo neque aliquid ad supremo ipsius judicii pertinens subsistere ut licet ... frequentes clausula codicillaris sufficiens sit ut ... relicta in test. ab intestato deberentur ut ... jura ... nō ... excipitur in casu quo testantis dispositio per inofficiosi querelam irrita facta ē nam tunc tota dispositio quasi ... a judicatur ... ex l. 2 l. ... ex l. repudiantis 17 in § 1 ff. de inoff. test. ... in d. l. Titia 13 ff. de inoff. test. et in d. l. nec fidei comissa 36, quas

ita

ita erudite observat Olivat. lib. 7. Ant. Donell. 918 lit. D. et Ant. Fab. in Cod. add. l. 13 ff. de inoff. test.

N. 48.

cariby ingo aliquo nota dementie testatoris licet directio ad ea intestati debentis fideicommissa a legitimis prestari debeant, et quando clausula codicillaris ex qua testatore, qua fuit in testamento subiectam quando ex dictis sufficientes explicatur et ex hanc observationem intelligenda est iura in l. Lucius 88 in § Lucius 17 ff. de leg. 2. in illis verbis Lucius Titius hoc meum testamentum scripsi sine ullo juris perito secutus animi mei in secutus quam nimiam et miseram diligentiam et si minus aliquid legitime minus ve perite cetero jure legitimo haberi debet hominis sani voluntas. Ex qua clausula respond. Scaevola fidei commissa etiam a legitimis successoribus prestari debere ex aperta ratione in qua generalia voluntate testatoris solennis non stricta solennitas inspicienda est sed benignitas observanda ut aliquo modo et ex iis habere possit ut docet et exponit Cuj. lib. 3 resp. Scaevolae, ind. l. 88 in § 17 ff. de leg. 2 — Diminiet ex dictis clausula codicillaris supposita intelligitur quando enim ea propter intestato ve generaliter qua testator sua voluntas omnimodo advinquere ea desiderat significavit ut in l. Cum pater 77 in § Dum matrem ff. de leg. 2. Ubi vers. Papinianus affirmat enim eam matris voluntatem in testamento pro his explicatam sufficere ut ad omnes successionis species eaque in testamento ve ab intestato fuerunt extendantur. ita exponunt Cuja. in miscellan. sequentes Cuj. lib. 8 resp. Pap. in d. l. Cum pater 77 in § Dum matrem 23 ff. de leg. 2° Donell. in l. ea qua 14 C. de fideicommissis. Ant. Gom. in l. 3 Tauri n° 74 et plura alia observant Donell. lib. 7 comment. in 928 et ibidem Oliva lit. C. cum seqq.

N° 49

Ceterum si codicillaris clausula

Expressit

eiusque applicaretur neque ex renunciatione apponi, aliquando principium ex eaque, ab intestato ... fuerunt ... praestare in ... sicut ab intestato venientes sine ... qui ... institutio fuerunt et quia ex quavis causa tit. ... hereditatem ... potuerunt obtinere ab intestato ... obtinuerunt ... animadvertendum est ... dic. quod ... ab initio ... ex eo ... primo hereditatem ... sicut generaliter ... venientes ... dicat ... subsistit ... diminutione aut ... causa ... bene ... ut ... l. in ... ibi aut ... hereditate ... 4 ... in princ. ... quavis ex causa additione ... ab intestato hereditatem obtineant ... fuerunt ... libertates ... praestare retinent ... l. sigs 814 ... leg. 2. ... l. 3 ... l. illud. 3 ... l. sigs 8 ... l. si veritas 23. ... 4 ... ff. de vulg. ... l. 26 ... 25 ... 19 ... 2 ... 11 ... 24 ...

N.
90.

Haec principia ... plurimis etiam ... ut illa ... hereditate ... libertates ... l. si nemo 18 ff. de ...

f.

legatorum

legatorum = secundo exaltationis ne. ta efficacitas, quando certus
ex Auctorit. in Valer. sedet ett. non videtur l. 1 § deinceps. ff. recept.
l. ora § cum dileg. 2. l. tibi 2 ff. de bonor. possess. I tab. et pro
intest. de hered. quae abintest. deferuntur = ver. ... modo
q. ... abintestato deferentur ... vel ... servare licet ett. addit.
ne in formaret ... cum potest q. devenerit q. clausula codicillaris
expresse fuit adjecta ... ex ... ...
et ... quae ... exclamat ... ind. int. 38 ff. deinde ...
l. 6. ... exposit. ... n. ... 3 ... n.
ex n. 9. accedit ... altera ... ...
... q. ... clausula codicillari ... adjecta ...
in ... et legitimas ... deferenter, ...
... pretorii edicti cautio leg. ... in l. 2 ... toto
ff. ... omiss. ... quae ... ...
... pretorii ... ... in l. 2 ... toto ff.
Alleg. preist. ... tab. bonor. ... ...
... ... q ... hereditatem
ex ... ...
personis ... ...
...
...
... ...
e ... ... codicillaris adjecta ... ...
8 ... ... n. 3 ... ... 23 ... ... n.
Ant. ... ... l. ... 3 ... ...
... decad. 36 ... 2 Menoch. ... 87 n. 99 ...
decis. 67. n. 23 et Peregrin. de fideicommiss. art. 2 n. 31 et alii
plures quos refert ... l. 7 ... 18 lit. ... et
lib. 4 ... 8. lit. B ... ... 28 lit. G. ... ...
Domini =

decretum Virtuale a deo cum elegimus scilicet, eaque in testamento relicta fuerant praestare teneri ex eorum persecutoris iudicio, et ex legis dispositione ab intestato ad hereditatem vocantur et si quaerit an ... faciat et clausula codicillaris qua caveat ab eo quod primogenitus ab intestato ei succedenti fidei commissum praestari, et tunc ille solus qui ... solvere teneatur et ... repudiante ... sequentes successio devoluta sit ... fideicommissi libero remanebit ut docet Bar. in l. 1. § illud certe quod ... ff. ... venientes ab intestato fideicommisso ... ea ... faciat ... in ... fideicommissum ... fideicommissi ... abstinere potuerit ... in ... testamento ... et ... de ... forte testator cogitauit ... fideicommiserit ut ... in simili casu docet Bar. in l. penult. § ... de jur. codicill. ... debet ... pater ... nec videri ... et ... et ... ab intestato venientes et ... tantum ... coheredes ... ipsi tacite ... clausula codicillaris generalis ... fuit ... praesumpta voluntate ... et ... testantis ... coheredis ... et coheredis ... aequitati ... suadet ... ipsius testantis iudicio teneantur ad ... legitimi ... ab intestato venientes ... testantis ... potestate ... hanc resolutionem amplectuntur ... Jonel. ... Gual. ... in ... 2.

sequitur

sequali Tab. I. 4. Sect. c. 15 quem refert et plura Ghronae Trad. d. 16. 8. ... 98. lit. B.

N° 52.

Ex quo pariter apparet clausulam codi cillarem in testo appositam aut subiectam non intelligi nisi testatoris [illegible] ex ipsa [illegible] deprehendatur mente, alias [illegible] collig[illegible] Ex quo pro [illegible] Cujacij et aliorum [illegible] doctrina relata [illegible] n° 45. infertur, similiter ex sup. animadversis herede instituto repudiante et ... cadentibus ad causam intestati devolutis venientes hæredes legitimos ab intestato venientes legata, fidei commissa [illegible] aut libertates præstare nequaquam teneri licet teneant [illegible] licet ipsi ex judicio testantis ad hæreditatem admittantur [illegible] in ex testatoris judicio [illegible] ... aut forte [illegible] non cogitaverit sed ex lege [illegible] dispositione ad hæreditatem admittantur, ex quo pro [illegible] refellitur [illegible] relata sup. d. n° 47. quatenus existimavit ad expositionem [illegible] l. quæ rebus 19 § fin. ff. de test. mil. [illegible] de [illegible] tempore a milite instituto repudiante instituto hæredes legitimos ab intestato venientes legata a milite relicta solvere teneri licet aperta juris [illegible] responsa [illegible] perpendamus et juris [illegible] inveniri [illegible] certissimum est hæredes legitimos legata quasi ab ipsis tacite repetita præstare teneri nisi ab ipsis [illegible] et sequentes argumentum difficultatis expensa sup. n° 44 non obstare [illegible] dispositione militari quæ a [illegible] cuius libet paganam et [illegible] ex animadversis d. n° 44 relicta a [illegible] dispositione loquuntur semper [illegible] et effectum obtinet licet institutus hæreditatem repudiet relicta autem a milite non debentur ab instituto ex d. l. quæ rebus 19 ... ff. de test. mil. neque a legitimis hæredibus si prior institutus hæreditatem adire noluit ut

Cx sup.

n° 53

ex iud. dictis manifeste probari videtur, et consequenter ut dicebatur difficultas alia expositio exquirenda est.

Planioris igitur ex alterius iuris principijs quae gaas non ab omnibus et sic alteri non audit. Menoch. de arb. 3 de praesumpt. in praesumpt. 108 n° 99. licet [illegible] sapientissimus. Sed existimaverim ex eo legata amittere [illegible] non adhaerere quoniam heredes legitimi praestare tenentur absolute quod breviter regulis ut generaliter statuit neque aliquando [illegible] responsum aut specialiter voluit agerunt. Quoque heredes de [illegible] praestare teneantur ut stat ex [illegible] ignorantia Menoch. ibi Si vero institutum est non admittit hereditatem [illegible] di huius temporis manet aequa succedentes ab intestato ipsi nihil ex lege militis [illegible] de test. mil. et non legata praestare tenebuntur ex quo peranimunt commodum [illegible] donec [illegible] secundus iste vocatus succedere possit. Ex [illegible] generaliter heredes ab intestato venien- [illegible] renuntianti [illegible] instituti, eadem omnia quae in test. relicta fuerunt solvere teneri ex eo solum quod commodum hereditatis consequuntur. Utramque autem partem audenter hic et a cinqu. n° 91 declarimus [illegible] heredes ab intestato [illegible] legatorum praestat. nisi clausula codicillaris adiecta fuerit a testatore et ipse aliud vere est hanc resolutio [illegible] si clausula non generalis apposita fuerit si heres tantum prior [illegible] fideicommissorum omnia [illegible] et ipse hereditatem repudiaverit. Z loco [illegible] vocatus a lege non teneatur legata praestare ex eo licet hereditatem et ipsius commoda consequatur non sufficit [illegible] ut legata solvere teneantur quoniam in ex iudicio testatoris [illegible] [illegible] nemo adstringendus est per [illegible] et solvere quae praestare mandavit testator quae necnec

G.

Subsit. 28

minit heredis legitimi, neque successorum cogitaunt, et exp̄ruendas neque Al. Alienoctum iacet. neque vo. quai gras attulere defendi aliquo modo ꝑt.

Ut tamen diligentius animaduer- etur his principiis iuris persolvi utique dubitō aserendum est in specie d. l. que iubet in ingestionem nullo modo legata a testatore relicta deficere, si heredes ab intestato venientes, vel quilibet alius adque hereditatis peruenire contingerit ea praestare teneri, et ex consequenti in deterioris idō. semper melioris, et fauorabilioris futura fore dispositionis militis, quam alterius cuiuslibet pagani, quod facilius explanē, et clarē percipiatur sciendum ē inter alias similitudines, quas militibus fuerunt indulta ... fuisse ... ut ipsorum dispositiones semper subsistant licet iuris ordo aut solemnitas in ipsarum confectione obseruata non fuerit ...

tique omnes obseruationes militibus testamentum facientibus relaxant, et remittuntur ex l. 1. ff. de test. mil. nuda namque militis voluntas sufficit ut testamenti legitimi et perfecti exitum capiat l. diuus 24. ... nec tamen. 21. l. miles 35. l. ... ff. eod. tit. l. quamquam 3. C. eod. iuncto primo et § 1 inst. de mil. test.

Ergo primo illud etiam descendit ad testamentorum militarium exitum, illud etiam admittunt ut custodiant et ex complexant omni modo ad similitudinem testamentorum ciuium paganorum in codicillares, aposita ... et specialiter adiectas, quas obseruationes verissimas et singulares existimo, et manifeste probari iudico ex l. similes 3. ff. de mil. test. ... militem ... destinauerat iure ... antequam testaretur ... perficeret decessit, et refert ... Pomponium dubitasse, utrum voluntas eius ... sit ... responderet quod ... modo ... militis volunta- tis quam alterius pagani iudicandum est, et semper existimandum

militem

militis in eodem iure dimicantes testari paraverat apparat illum beneficio militari renuntiasse, neque credendum est illud testam. ab eo genus elegisse, quo iudicium suum potius impugnaret quam ordinaret.

55.

Itaque militaris dispositionis summam vel testamentum iure dimicanti legitime perfecti in vim privilegii militaris substineri [illegible] dicta l. decernitur et ad [illegible] Vertus [illegible] exemplo pagani [illegible] codicillares adiecit [illegible] quemadmodum plerique pagani solent [illegible] testamenti [illegible] scripturam adiicere [illegible] codicillorum valere [illegible] dixerit [illegible] testamentum [illegible] militari dispositione [illegible] [illegible] validitatem [illegible] dispositioni pagani [illegible] clausula fuit adiecta ut observat [illegible] mil. tit. [illegible] Licet [illegible] codicillaris clausula [illegible] militum a cieba adimplet, et sustineat dispositionem eodem modo quo sustineret pagani test. quando haec clausula ex [illegible] adiecta, et [illegible] in test. militis [illegible] inducitur clausula codicillaris ita ut si [illegible] velet tes[illegible] imperfecte test. [illegible] licet iure test. dispositio subsistere non potuit, iure in codicillorum sustineatur et validitatem obtineat, atque ideo in milite idem operatur [illegible] tacitae, et subintellectae quod operatur expressae clausulae codicillaris in pagano [illegible] dum [illegible] [illegible] et difficultatem expensam sup. [illegible] dissolvemus et [illegible] in d. [illegible] in [illegible] [illegible] hanc eandem observationem inveni et [illegible] apud [illegible] [illegible] mihi quae amentissimus D. Joseph. [illegible] Opusculorum [illegible] libro et [illegible] quae scripsit ad notas Claudii [illegible] in [illegible] missa 5 [illegible] n° 5. [illegible] dubio docuit inter alia militaria privilegio

[illegible] ut.

illud etiam admisse quis ut militis testamentum extra habuerunt causa in codicillis ipsorum in ipsis appositam esse censeretur motus authoritate text. in d. l. similes 3. ff. de test. mil.

N° 56

Caeterum in confirmationem predictae observationis non inutiliter expendi potest vim[illegible] singulare quod dicitur Vigiani respons. relatum in l. quaerebatur in princ. iuncto §. 1. ff. de test. mil. in cuius specie [illegible] suppositum militem qui prioris testamento [illegible] legitimos [illegible] heredes instituerat. Legatis et libertatibus [illegible] relinquerat secundum test. post modum ordinavit [illegible] sequentem clausulam adiecit, fidei heredis committo ut priores tabulae valerent dubitatur igitur quem effectum sortiri posset militis dispositio ex authoritate [illegible] dictorum [illegible] et ante quam questionem proposita dissolvat [illegible] militi pure test. [illegible] et [illegible] pluribus test. decedere iure singulari permittitur id plane iura in l. miles 37. §. fin. l. ex militari 11 §. fin. cum duabus sequentibus ff. eod. atque ideo pluribus a milite factis test. sive simul sive separatim fiant omnia valitura nec [illegible] test. per posterius rumpi, quin immo militi inde [illegible] ut possit unum heredem ex parte bonorum heredem instituere similiterque decedat ut ex parte testatus, et ex alia intestatus decedere possit l. miles 6. l. ex militari 11. cum duabus sequentibus l. si certarum 17 l. si duobus 37. ff. de test. milit. l. 1. [illegible] ff. eod. l. [illegible] 7. ff. de vera. iur. et §. hereditas [illegible] inst. = Animadvertit etiam [illegible] similes codicillos faciat et [illegible] test. [illegible] codicillos antea factos in potestatem institutionis redigere deficere [illegible] institutionis, quam a [illegible] precario [illegible] erat! et [illegible] ex [illegible] militis dispositio etiam [illegible] precariis facta in [illegible] directae dispositionis [illegible] [illegible] [illegible]

tiri

de Iulii et pass.

tiri in poni, ut docet Ant. singlis in d. c. 13 Spin. si ita
miles intest. suo libertatem cedens eidemque etiam quod a
primo et a secundo herede per fideicommissum hereditatem re
liquerit, tunc hi ... inferioribus ibi ... nominibus ho
bendus erit ac etiam servo libertas simul et hereditas directo
datae ... dict. nil. ... Antiquiores observat Duaren.
... mil. tt. ... Colum. 2. ... subtiliter exponit
Ant. Fab. lib. 19 ... Colum. 7. ... adeo mili
tare privilegium extendi ... cum tt. ... herede
... instituat ... recte posita
priori heredi hereditatem ... ad imere
... miles 35 ... generalior. ... duo
ren. d. ... Ant. Fab. ... 71 error ... Cuj.
duobus sequ.

Ergo principii casu quo ... querebatur
illo secundo ... ad quaestionis ... resolutionem militis
mentem necessario inquirendam esse ... inea ... neae
extitisse ... secundum tt. ... ut ... tt. ... valent
ita judicium ... et ... aut ... et get
... tt. substitutione ... duobus tt. ... ut ...
... animo ... miles ... valere ... tt. id
... obnoxiere ... tt. ... hoc etiam
militi ... ut in duobus tt. ... et ... praecedente
... animadversum ... in ... in ... ponit
... miles in specie ... nihil ... causa ... quodque
... tt. ... habitum esse neque ... specie ... animo
... tt. ... animum ... sicut ... Eam
... transcriptos ... nec ... et ...
... tabulis ... apparere ... exempla ... ...
luntate) ineamente extitisse ... in ipso jure ... sit ...

4.

[illegible] dei omissis [illegible] ingressi ... pacta [illegible] habere ... ex illis ... ex posito ... [illegible] heredes ... [illegible] ab intestato ... jure ... fidei omissi ... in ... ibi ... mihi videtur ... [illegible] ... heredes ... institutione in ... [illegible] ... ex ... in ... [illegible] ... biennale in ... fidei omissi ... codicillorum ... [illegible] ... [illegible] ... fidei omissum ... in ... fideicommissi ... codicillorum ... prioris ... [illegible] ... [illegible] ... ad ... [illegible] ... difficultas ... [illegible] ... notandum ... [illegible] ... error. gram. ... [illegible] ... existimasse ... [illegible] ... supposuisse ... [illegible] ... querebat ... [illegible] ... rigore ... in qua fidei omissum ab intestato ... relictum ... [illegible] ... codicillaris ... [illegible] ... ide ... leb. 10 ... 2 ... error. decad. 71 ... err. 1° ...

N.° 58.

[illegible] ... ignorante ... [illegible] ... quod ... [illegible] ... verisimile et difficile ... [illegible] ... ponere in ... priore ... [illegible] ... prioritate ... [illegible] ... heredes ... [illegible] ... scripsit ... [illegible] ... [illegible] ... [illegible] ... imperatoris Severi et Antonini ... rescripto ... apud Justin. in ... [illegible] ... intra ... elegantissima ... [illegible] ... [illegible] ... secundi ... institutio ...

[illegible]

Oregulae ac si verui, certarum mentio facta in initiatis inquirit.

tert. ex eam [illegible] suspensa subst. [illegible] mentione extra

ab eius in initiatis censeri [illegible] in 2. si exstendo a. l. quoties § siduus

Iusia sicius 20 § ex eado 35 d. de her. inst. [illegible] A. Fin. fac.

[illegible] observat Fab. 9 [illegible] § 19 et latius ac in multis decad. 19.

Error 7 et seqq. [illegible] ttt. perordinari [illegible] perfectioni

[illegible] Feoq. [illegible] Cu [illegible] ttt. accedere [illegible] usq. dare

innumeratis quae exerit Fich. in 2. posteriore inst. qq. mod. ttt.

infirm. necessario sequitur prius ttt. ind. [illegible] 29 itaque

secundus gerius [illegible] hebiunati ita [illegible] Marciani in Vcto

[illegible] heredes in secundis tabulis instituto adid. [illegible]

[illegible] ex. [illegible] specie [illegible] quartas

[illegible] restituat [illegible] priori [illegible] instituti [illegible]

[illegible] tabule [illegible] tabulae [illegible]

[illegible] ex filii [illegible] adiecta [illegible]

[illegible] ttt. [illegible] dubitari [illegible] quoru

Expositiones [illegible] Fab. [illegible] et

tractatu de error. decad. 71 Error 2. et 4. et [illegible]

Vigiani

[illegible] indicia [illegible] disperant [illegible]

[illegible] dispositione [illegible] nabent q. simile

§ 9. [illegible] perfectius ex positione [illegible]

[illegible] atque ideo ut [illegible] mens perfectius percipiat [illegible]

[illegible] exponere operae pretium iudicavi q. [illegible] Fab.

Fab. de error. decad. 71 error 3. dissimilitudo [illegible]

[illegible] in aliquibus [illegible] dissimilitudo in eo [illegible] Vigianus

[illegible] tractat [illegible] mil. Marcianus vero in

[illegible] 29 testi pagani [illegible] in eo [illegible]

[illegible] militi [illegible] in posterioris [illegible] tabulis [illegible]

[illegible] scripsit [illegible] pagano, [illegible] certainus [illegible]

H

n° 59

secundo

secundo tt̃ negeq iatdiue, tertia eius cum qr̃ le Cap dura
stat quo miles in priore tt̃. Utroq hered institutū Venu data
legata, fideicommissa, et libertates relinquit ut. convertis qua
qua p̃ gratiā inst. I. in Vetrologi degeneraio, y in prima heredes
institut. in priore tt̃ ex ratione atquideo de legato q fidei
commissoq aut libertates p̃stationē nihil dicenti. Ceperq
Vtrumque horū speciei incidisse proximuma ē q̃ ratemq
ad nrā̃ institutionē spectat, y bq. Ulpianus, qz Marcianus
proponit illic testatore, sive publice, sive paganus qui
in posteriore tt̃. equaliter eius eadē pene verba, scilicet
eyerunt et [illegible] Caius in posteriori tabulis, ut
priore tt̃. scripsi dicta in vtriq fideicomm. sustinere
ut fide Locū, et Sequi regeri Ant. tab. loci verbum

idque

exlit. Vtruq q̃h. manifestissime depromit q̃. lg. militis mentes. lege
Verbis sciri ind. loquebatur in fidei heredi. mittere ut priores tabulas
valeret. Marcianus vero ind. lege in Voluntates priori se
quenti h Verba explicare p incertas fidei comm. Verba eque valere
prius tt̃. explicē p diligenter animadverti dubitari g̃
Vtrumque testatorē inter in fideicomm. Voluntatē in priori
tabulis p heredes sustineri Voluisse atque ideo tam in Vna
quam in altera lege decernit p incertas fidei comm. Verba dubi
tari n̄ oportere, quin teneat heres in posteriori tt̃. scriptus here
ditatem per fideicommissum restituere his q in priori tt̃. fuerant ins
tituti, animadvertendum autem duplicem ruditorem sententiam
percipiant aliter apud Ulpianum, aliter apud Marcianum here
ditatem restitui, nam in specie d. legis quam probat in integra here
ditas absque diminutione falcidie, restituitur in specie
autem d. legis si quis cum retentione quarte Verum spero
te restituturum heres. secundo tt̃ vocatus hereditatem restituere

tenetur.

tenet Exceptiones inter militem et civilem retinet l. in ttt ? c
re ...talis, ita etiam inter utranque speciem, et in priore
et in ... ... uti ... aliq. Paulus ... similes duo ttt. sic facere
ut in priore heredes ex asse solo instituat, in posteriore vero
exteris certis tantum rebus heredes recusat ... ttt. subsistat
pro ... omnino neque censeatur per posteriorem revocatum, sicut
revocatum intelligitur in d. l. sig. priore 29, et vero divinitus
dicit ex ... quod pagani lex duobus ttt. decedere non fit.
militem autem ... duobus ttt. posse decedere ut iam animadvert
imus sub n° 56. et 58, atque ideo nihil prohibet quod utrumque
ttt.³ ... subsistat, et ita secundus ttt.³ ad ... ...
ut heredi ... scriptus res certas ex quo institutus reperitur
... ... reliqua autem bona ad heredem priore ttt.°
institutum perveniant, quod posterioribus tabulis ... heredem
miles abstulisse ... quod secundo ttt. ... ut docet
Cauchus in l. militis 30 in ... et 8.² ff. dett. mil. ... omnia
fatetur Subtilis Fab. decad. 15 error. 7. et decad. 71 error. 2.°
et 2. et ... error. 3.

12.

Ita animadversis et ... 11.
quae ... ... inter Utrumque ... differentiam
... ... in d. l. sig. 29 ... pagani voluntate
posteriori ttt. ... ... n° ... inter ...
fideicommissi, et ... ... habitum ut ... ex ... illis
... ... incerta fideicommissi libera
Ulpian. autem in d. ... ... et in ... fideicommissi
et in ... codicillorum ... ttt. auctoritate ... fuisse
... ... magis ... fideicommissi ... fideicommissi
... codicillorum ... ... ttt. ... quae differentia
... ... subtilis Fab. ... quae subtilitatem
... ut ... ... ad ... expositionem ... ...

H. ... ve

cur quaerit inter subtiles vir utrum clausula codicillaris
a milite fuerit apposita in specie d. l. quae quaerebatur ignorans
aut sciverit praemissam in d. l. sigs ut in hac fideicommissi etiam
solum, ut staret ad fideicommissum inducendum in illa aut eadem cum
fideicommisso etiam sufficiant ut non solum in vim fideicommissi verum etiam
in clausula codicillari militis voluntas sustineatur, utrumque
namque clausulae fideicommissariae scilicet et codicillaris dissimiles for-
ma est, et diversissimi effectus, et principalior quatenus ad nostrum
institutum spectat differentia est quod clausula codicillaris illud
efficit ut dispositio testantis directa, si valeat in fideicommissariam,
et testamentum in codicillos convertatur, sive ex testamento sive ab
intestato succedatur, et potestas fideicommissi ita ut etiam ut dis-
positio directa in fideicommissariam tantum posito vicem, non autem
ut ab intestato adimpleatur, sic ut testamento fuerit scriptus fideicommi-
sis ut plures observat Fab. d. decad. 71 in principio, et quique
error 2. in qua quod verissime resolvit militis, si de expressa clau-
sula codicillaris appositione loquamur) in d. l. quaerebatur
non adiecisse dicto error. 1. ita fit, etiam hic differens
casus ab illo quem tractamus in eo quod in d. l. quaerebatur, et in d. l.
sigs posteriore non adhibuerat testator clausulam codicillarem
ut voluntatem in posteriore testamento declaratam confirmaret jure codi-
cillorum et errore 2. eandem resolutionem amplectens, sic in prag-
maticos insurgit ex eo quod existimarunt in d. l. quaerebatur
clausulam codicillarem a milite suppositam fuisse, et ad ista
interalia subijcit, cum tamen testatores nihil de codi-
cillis exprimerent praeter solum de fideicommisso.

n.o 62.

Contra, in resolutione
vir plurimus agendis juris Lucht. Ulpiani Vitalis idem in causa fi-
deicommissi et codicillorum in d. l. quaerebatur, et expressim ma-
nissime decrevit militis voluntatem non solum in vim fideicommissi

Pariz in clausula codicillari Iuenti, et exinz habere dicta
iacen Fab. decad. 71 error 1. 2. et 3. et in 19 Siculus.
Qu. licet nordum dependeat ind. l. clausula codicillaris
neque expre aggosita fuisse negative, at nihilo
debere, hij error 1. 2. et 3. in prio ... propterea
Ttarz ... trans cripsere mentem ... considerarique et
... animo voluit ... animad
... fuisse ... iuris ...
et Ulpiani mente ... etiam ... Volun
tate animadversa ... superius transcripta ...
... ut affirmandum sit ... ind. l. ...
... ut ... scripta ... in solum ...
fideicommissi ... etiam ... codicillorum ... substinere
Voluit licet paganus ind. l. ... 29 solum modo de
... fideicommissi cogitaverit Ant. Fab. ... seque
... omnium ... apud Ulpian.
aut apud Marcianum factum est ...
... firmare voluerat iure ...
que id egerat ut sustineret illud in ca ... fidei
missi ... apud Ulpianum ita ut sustineret
etiam in ca ... Codicillorum at vero paganus apud
Marcianum in ca ... fideicommissi ... etiam
Codicillorum ... Ant. Fab. ...
... voluntate clausula codicillaris admittere ind. l. ...
et in ... clausula codicillaris eius voluntate ... (licet error 1.
2. et 3. in prio ...) eandem ... affirma
tum ... d. ... 19 Siculus ... col. 7. ...
... Ulpiani ... inquit ...
... ut ... testamentum ... Velle se
... valeret ... dicta ...

Vi et potestate prioris ett. initia fideicommissi et codicillorum et
interveniri, neclnon privilegio militum adeoris injuria …)
Eamus si q. fideicommissi ex codicillorum jure statue miles Voluntas
expressa etiam eandem Baerlendit Ant. Fab. decad. 10 errore
Ubi de milite ab intestato idē ab intestato ab intestato Venientibus fideicommissa relinquere … in l. quaerebatur 19 . …
quanis sive ex in Ve[r]. clausula codicillari dispositione …
… fidei, ut constat ex dicto illo, clausulis earum clausulæ
codicillaris ett.

[n.]° 63.

… Exigi … vera …
ei obseruationem superius a nobis traditam … militis
militis codicillarem clausulam ipso jure … militum … conditionem
suppositam … intelligi licet … nec …
… non … Ulpiani … in l. quaerebatur 19,
… Marcian. in l. … 29 …
… consideratione … ut …
… neque militis neque paganus clausula codicilli
… ut … lege … ubi …
… fideicommissum solum caveat … tabulæ Valerent ut …
Ant. Fab. … in hac parte in hac parte … libenter …
… similiter … ind. … 19, pagani Voluntatem …
codicillorum … fideicommissi … militi
… Voluntatem in d. l. quaerebatur … fideicommissi
Veram … in …
… in Vtraque lege … fideicommissaria clausula …
… et a pagano apposita fuisse quod … perinde
… modo … ut priores tabulæ valerent et
nihil amplius neque in Vna neque in altera … caverunt
ut constat ex … transcripti … n. 00. … Ant.
Fab. pragmaticorum 1° … quæ ultima … in d. l. quaerebatur. mil…

clausula

clausula Codicillarem tubi ... cuius iudicio ... intra partes ...
benissime subscribo = Veniendi autem ingenij tui sanctitati quod
venio negat in specie d. l. querebatur clausulam codicillarem necessa-
rio subintelligendam esse nam praeterquam quod aliomodo intelligi non
posset ... id est intentam fideicommissi et codicillorum ...
etiam ... difficultate ... adductis ... principiis ita ...
tu invenies ... in dictis
legibus clausulam codicillarem ... tantummodo.
clausulam fideicommissariam ... et eisdem ...
tabulis ... et licet in testamento pagani fideicommissi ... solummodo
adsufficiant ut fideicommissum inducatur, non tamen sufficiunt ...
dispositio ... in clausula codicillare in testamento autem militis
militaris dispositio ... in causam fideicommissi, ...
in causam codicillorum ... traditas ...
nisi ex alio prius ...
... in testamento pagani codicillarem clausulam ...
subintelligi nisi expresse ... a testatore in testamento ...
militis ... privilegio singulari subintelligi ...
... iudicari ut meliori ... modo voluntas
ipsius testatoris ... mandetur =

Expedivimus ...

inde ... ad ... positiones ...
... adeundo ...
... in cuius ... demonstrandas ...
... in ... casibus ... occurrere
ut ... legatorum ab intestato relictorum dubitetur ...
et ... habitura est militis dispositio, quam pagani
voluntas in quo casibus quasi per demonstrationem ...
... = igitur primus casus est quod heres ... ad certum

H

... 74

tempus militiae institutus hereditatem agnovit in quo, si ipse ex obstinatione se quasi retrahit ex aditione hereditatis probiciente, legata, fideicommissa, et libertates solvere tenebitur ubi vivus insoluat ipsius heres tanquam ex aliena persona ut dicta trad. sup. n. 39. et 40. Secundus casus est quando institutus hereditatem repudiat, tunc enim licet in admittendis suprascriptis ... tanquam ab intestati causa devolvatur medio illo tempore priore institutio ... atque ... ab intestato venientes admittendi sunt ... ex judicio testatoris sed ex ipsius legis dispositione, nihilominus ... onera legatorum soluendorum admittunt in quibus ex eo quod ad hereditatis ... incitantes ... quae sup. n. 51 et 53 impugnavimus ex illa elegantissima observatione ... quod clausula codicillaris ... in testamento mil. apposita censetur ... quod ab intestato venientes solvere teneantur et in hoc casu dubitari non potest laborauit ... in militis dispositione quae ... liber pagani quando quidem ut sup. ex n. 49 et 50. ... demonstravimus ... ab intestato pagano succedentes legata aut fideicommissa ab instituto relicta prestare teneri, ... ad hereditatis ... ex judicio testatoris sed ex legis dispositione admittentes, et clausula codicillaris in testamento pagani adiectam ... ut ... adiuvare ... n. 46. ... semper.

Tertius casus est quando neque institutus ad certum tempus a militia neque heredes ab intestato venientes ... hereditatis effectu ... fiscus ... Exeo forte quod tanquam indignus hereditatem fiscus abstulit, tunc nanque indignus ipso jure heres efficitur et licet ex post facto hereditas auferatur heres nihilominus remanet atque ideo tanquam heres ad sub

stitution

n.° 65.

... non posit admitti, cognito hoc nihilominus iudicari licet ei omnia ablata sint ut docet Ld. in l. ex facto 43 § fin. ff. de iudic. ... ... in dignior ... here ditatis ... legata ... aut libertates praestare ... creditoribus satisfacere tenetur, ut ... iura in l. ... fisco ... ad Sylan. ... § ... ff. ... ... 90 § ... 2 ... i. l. sing. n° ... de ... in l. ... 58 § ... ff. ad ... ... l. Marcellus 3 § fin. 13 § ... 4 l. ... 14 ff. de iurisdic. l. 2 C. ad leg. Iul. ... observ. ... l. 8 § m. ... 29 ... lit. ... et ... in recitat. solem. ... in d. l. ... 90 ... 1° ... 4 ... hereditas ... in ... incidit ... hereditatis ... tamen quamvis institutus hereditatem retineat ... fiscus ... ex ... inmisione ... nihilominus ... hereditatem retinet ... omnes ... ; ... institutus heres per ... fisco ... curatorem ... hereditatem ad iudicem ... hereditario ... ex ... liberet, ... omnia ... ut ... in ... l. ... § ... ff. ... leg. 1. in ... ... eiusdem ... hereditatem ... ab intestato ... potuerunt ... hereditario ... solvere ... legatorum ... libertates ut ... iura in l. ... in ... l. ... 2 ... de leg. 1° ... 2 ... legatum ... ad ... l. ... 4 ... eadem 1 ... ... § ...

J.

man ...

66

manu[illegible]. [illegible] lib. 39 [illegible] jul. [illegible] 90 [illegible] dico [illegible] lib. 8 [illegible] Dom. [illegible] 29 [illegible]

[illegible] Sextus casus

Quidem adeo singularis [illegible] abstinendo cogitari potest videatur illa [illegible] contingere posse [illegible] jur. [illegible] in l. habendi licere 57 [illegible] neminem [illegible] deficere. [illegible] decessione successor [illegible] habeat neque adhibita bona [illegible] neque privatim a creditoribus distrahi [illegible] demonstrat in d. l. 57 [illegible] anteablatus [illegible] sine successore decesserit, itidem neque ad fiscum bona pertinere posse, neque privatim a creditoribus distrahi. Et [illegible] proposito eveniente [illegible] bona defuncti [illegible] neque fideicommissa praestat [illegible] libertates [illegible] praestare tenebitur ut ex [illegible] dicendi apparuit n[o] 78 et in hoc casu [illegible] sive in [illegible] militari sive in [illegible] pagani, tenetur fideicommissa, aut libertates relinquens sicut tangit in ceteris [illegible]. Proposui denuo [illegible] in quo [illegible] nullius [illegible] dispositio [illegible] voluntas [illegible] casus [illegible] posset nec [illegible] expedire [illegible] a [illegible] varius fuit a doctoribus judicatus [illegible] ex [illegible] antecessoribus primarijs. Sapientissimus [illegible] Petrus de [illegible] mirabilibus, singularis, et [illegible] apparuerit in eo quae [illegible] et [illegible] plura [illegible] colligendo intractatu de acquir. hered. [illegible]. Ve [illegible] in tractatu in [illegible] ad [illegible] in [illegible] pecun. judicantes [illegible] leges intelligendas [illegible] casum [illegible] hereditatem [illegible] defunctus creditoribus [illegible] tamen [illegible] et [illegible] habendi licere [illegible] hereditatem [illegible] bona a [illegible] pertinere ut [illegible] neque ad fiscum bona pervenire possint. Certissimum [illegible] regulariter [illegible] bona [illegible]

De jure Emph[illegible]

[illegible] ut dicit [illegible] inal [illegible] [illegible]
[illegible] [illegible] [illegible] habere 67
[illegible] casu in quo [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] 12
[illegible] [illegible] jud. [illegible] 67.
[illegible]

Veniens igitur [illegible] ampledens
[illegible] in recitat. [illegible] desuccess. [illegible]
[illegible] habere 27 [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] tempore quo
[illegible] [illegible] quadriennium fuit
[illegible] [illegible] [illegible] omni[illegible]
[illegible] quadriennium [illegible]
[illegible] [illegible] 1.
[illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] habere 27 [illegible]
[illegible] [illegible] [illegible]
[illegible] bona [illegible]
[illegible] [illegible]
[illegible] parte [illegible]
[illegible] [illegible]
[illegible] ex [illegible] auctoritate [illegible]
[illegible] bona [illegible]
[illegible] author jud. [illegible] 4. [illegible]

n° 68

Totaliter... [illegible]

[illegible]

... [illegible] ...

alter [illegible] genere 5781 [illegible] in
in [illegible] [illegible] jud. [illegible] [illegible]
[illegible] dedon[illegible] [illegible] in [illegible]
[illegible] [illegible] [illegible] non [illegible]
[illegible] requirenter [illegible] [illegible]
[illegible] successione decedentis, [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] ex [illegible]
ex [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] et exclusive [illegible] 57
et [illegible] creditores privati [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] 57 et [illegible] [illegible]
[illegible] 57 [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
judicio [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] judicare, a [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] 89 [illegible]

[illegible] 67

[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] ex leggibus [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

i[n] porumo, et eius pinu ex ad vel tertiu, gerat e[ss]e alternum

potest et . communic[ati]o [illegible] in [illegible] interiu [illegible]

bona dicta ex ga it, igitur d. resolutio ta [illegible] reddere

(et e[st] [illegible] que) et etiam accedit ne [illegible] decreto in eque in [illegible]

[illegible] neque per [illegible] ordine secreto (creditores bona dilata

nemo potine, nec quidem [illegible]. [illegible] quibet satisfacere

e[st]. s. f. ne [illegible] de [illegible] animadversa ipsius nent.

necessaria pt. [illegible] quire aequitate [illegible] ac

tempore [illegible] judicata cui omis possessio [illegible] exe[cutio] adhuc

poit. [illegible] tracere licet . et [illegible] ibi [illegible]

habere licere [illegible] [illegible] [illegible]

habere licet . [illegible] necessario [illegible] e[st] [illegible]

[illegible] et [illegible] emptio [illegible] licet, [illegible]

aliud jus novum post [illegible] acquisivit, quod [illegible]

viliter ne posit retinere, [illegible] hypothecis, [illegible] ma[illegible]

[illegible] [illegible] in [illegible] habere [illegible]

per sequentia [illegible] casu [illegible] collige [illegible]

[illegible] ita sit [illegible] nemo [illegible]

[illegible] [illegible] [illegible]

[illegible] [illegible] et [illegible] [illegible]

in [illegible] [illegible] impediri [illegible]

ex [illegible] e[st] ex [illegible] ac [illegible]

[illegible] positi in [illegible] sine [illegible]

casu, [illegible] necessarium e[st] [illegible]

emptor [illegible] de novo acquisivisse [illegible] vere

onere alias quidem habere [illegible] licere [illegible]

[illegible]

[illegible] praecedentibus [illegible] antecedens, et [illegible]

[illegible] dicit, [illegible]

habere [illegible] licere [illegible] nemo [illegible]

Creditr

n[umer]o 70

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] 1617 [illegible]
[illegible]
[illegible] accusat [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] modo 4 [illegible] accusat.
[illegible]
[illegible]
[illegible] 14.
[illegible] accusat [illegible]
[illegible] 23 [illegible]

17

proprijs negotio obvenit. Dixit[?] d. 15.23. merit. q. 17. qui mat
Moferidat d. l. 23 in q. 14. in bonorum[?] venditione n[on] solum ea que
debitor possederat, et in dominio habuerat, verum etiam actiones
bes[?] que ei remaneo[?] poterant a creditoribus distrahi posse ut
ipsis satisfaciat, quippe quia [illegible] manifestissima sunt, et injuno[?]
notissima quando [illegible], aut quo figmento [illegible],
[illegible] ita specie quae [illegible] nostri antecessor [illegible] exibere
personae, ad cuius instantiam [illegible] esse vere [illegible], cumque
[illegible] dicit [illegible] emptori rem habere liceret ex [illegible]
habere liceat [illegible] mouerit [illegible] 88 §.
2. [illegible] de [illegible] habere liceret [illegible] quidam
[illegible] evicta [illegible] in § 2 [illegible] 2152. [illegible]
evictionem [illegible] habere q. 7 damnatam [illegible]
[illegible] in [illegible] ex rei judicatae [illegible] et avocari [illegible]
[illegible] meo judicio affirmari [illegible], adversus [illegible] nulla
actio [illegible] sit [illegible]
sup. [illegible] bonorum curatoris [illegible] omnimo
[illegible] judicati actionem adversus emptorem [illegible] exercere
[illegible] emptorem [illegible] habere
[illegible] detinere [illegible]

N° 71.

[illegible] replicavit aliquem
in gratia antecessoris nostri [illegible] in ipso
[illegible] habere q. 7 nullam [illegible] quippe [illegible]
emptorem [illegible] ad alium [illegible] rei judicatae [illegible]
executioni mandari [illegible] predio illo [illegible]
existenti quo evicta [illegible]
decesit [illegible] ad tempus quo creditores [illegible]
[illegible], et [illegible] curatoris fuit [illegible]
q. actiones que [illegible]
[illegible] illo tempore [illegible] habere [illegible] emptori a [illegible]

12.

K

[illegible]

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] leges [illegible] ad [illegible]
[illegible]
[illegible]
[illegible]
[illegible] et hoc [illegible]
[illegible]
[illegible]
[illegible] creditores [illegible]
[illegible]
[illegible] creditores [illegible]
[illegible]
[illegible]
[illegible]

K

adversus eu antiquas actiones hereditarias exercere posi...
Pro unamodo exceptione qua ipsi posuit adversus eas que revocaret, ut expresse docet Dec. in d. l. in § ...
... de fideiussoribus ... primo apparere ... quod ...
... acquisitum ... habere ...
et hac interrogatione ... ad ... in ...
... in d. l. habere ... in § ...
Observandum est in emptore ...
... cum ... requisite, ... nouum ...
... super ... ad ... in hac specie et
... ex ... et ... ubi
... et ...
... in ...

74

...

[illegible] ... terr[a] ... [illegible] ...
[illegible] ... Vocaret, quae [illegible] ...
[illegible] ...
[illegible] ...
[illegible] ...
[illegible] ...
[illegible] ... alt. [illegible] ...
[illegible] ...
[illegible] ... impleta [illegible] ad fidei
admissarij [illegible] [illegible] eorum [illegible] [illegible] amodo [illegible]
[illegible] [illegible] in [illegible] et [illegible] [illegible]
[illegible] de [illegible] [illegible] [illegible]
et [illegible] [illegible] [illegible], et [illegible] [illegible]
[illegible] directarum mentis [illegible] [illegible] [illegible]
[illegible] [illegible] reperiret, et [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] ipsorum [illegible] et Imperatorum a
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] 41 [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]

75

[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

[illegible]

l. [illegible] et sua animadversione .. et initiare ingredimur de fideicommissariis in locum heredis directi subrogari, et verum est [illegible] dicere . nihilominus si substitutionis vim prius sumi ratione accipiamus certius et accuratius est, p[er]inde divisione à [illegible], primumque ex eo quod substitutio est secunda [illegible] substitutio, p[er]inde fideicommissarius autem . licet fideicommissarius heres [illegible] non dicitur ut [illegible] in directo heredi . [illegible] 8. [illegible] in l. de bon. possess. qui potius heres et fidei commissarius [illegible] se [illegible]. [illegible] opponunt ex Vulgari [illegible] inst. in primis 2. [illegible] heres in l. de fideicom. hered. [illegible] fideicommissarius heres non est necessario [illegible] fideicommissarius [illegible] de substitutione [illegible] et ad. firmatio [illegible] discursus [illegible] Caprican. resp. in retones 39 & n. ves 34. [illegible] Sir [illegible] 10 [illegible] hereditatem restituerat ut [illegible] exitus [illegible], p[er]inde hereditatis [illegible], [illegible] sibi substituere debuit. et [illegible] negari [illegible] in [illegible] specie [illegible] fideicommissariis (sic ita vocant scriptores) [illegible] in fideicommissaria substitutione [illegible] in [illegible] heredis [illegible] et hi omnes [illegible] substitutionem in specie l. leg. [illegible] [illegible] [illegible] heres [illegible] q[ui] habuit substitutionem [illegible] fideicommissaria [illegible], [illegible] loquendo substitutionem non est, licet [illegible] significatione [illegible] tradidit a Fusario in [illegible] de substit. [illegible] de variis substitutionis speciebus disserit de substitutione fideicommissaria [illegible] ex [illegible] 266 [illegible] 3

740

[illegible]

K

[illegible] 2 [illegible]

17

[illegible]

[illegible]

[illegible] specialiter [illegible]

[illegible]

[illegible]

[illegible] n.º 72 [illegible] cap. 2 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] cap. 4 [illegible] n.º 24 [illegible]

[illegible]

[illegible] n.º 21 [illegible]

[illegible] in q. [illegible] § 4 [illegible]

[illegible] cap. 7 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 17 [illegible]

[illegible]

[illegible]

[illegible]

[illegible] n.° 14 [illegible]

n.° 70 [illegible]

[illegible]

[illegible] 19 [illegible]

[illegible] 14 [illegible]

[illegible]

[illegible] 15

[illegible] ... [illegible]

[illegible] ... terminationes [illegible] ... Armeniae [illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] quodque sive [illegible] ... institutiones [illegible]

[illegible] ... [illegible] ... 14 [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... 21 [illegible]

6. [illegible]

a [illegible]

Finis Coronat. [illegible] ... Opus.

[illegible]

Anno [illegible] 1656 die 12 mensis Februarii [illegible] a [illegible] Petro Vitto [illegible] ... Universitate [illegible]

[illegible]

a d titulum ff. de [illegible] metodi et administrationi

Ultimi magis mortalibus grata [illegible] [illegible] Varietas
[illegible] meminimus, qui apud Venetias [illegible] conscribitur concipitur
quando [illegible] semper [illegible] [illegible]
Diuturnitas, quae aliquem in vita multis, stomachi
eius declarare potuerunt. Diversa a [illegible] principe
[illegible] principi [illegible]. [illegible] supremus senatus
[illegible] maiorum cathedram nuper [illegible] addidit
et [illegible] tempore [illegible] [illegible] explicandum
[illegible] titulum de fide [illegible]
quem vobis exhibeo charissimi [illegible] Auditores [illegible]
[illegible] assignationem [illegible] [illegible] [illegible]
[illegible] [illegible] ingredior anulo [illegible]
tentata
[illegible] [illegible] circumdatis [illegible]
[illegible] Oratius [illegible] anni tamen [illegible] [illegible]
[illegible] adeo [illegible] [illegible] Ut mitior [illegible]
[illegible] magis videatur [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] Bernardini [illegible] Antonii [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] ad [illegible]
[illegible] in [illegible] [illegible] decretalibus et
[illegible] 12. part. [illegible] lib. 5. [illegible]
Summa rerum capita [illegible] documenta [illegible]
ordine singula percurrendo et [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] differat. [illegible] L.

[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
Verba [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] 132 [illegible]
[illegible] [illegible] 168 [illegible]
[illegible] [illegible] 174 [illegible]

[illegible]

[illegible] ... p. 574 ...

[illegible] ... n. 37 ... [illegible]

[illegible] ... 15 ... 48 ...

[illegible] ... 62 ... [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... n. 22 ... [illegible]

[illegible]

[illegible]

[illegible] ... n. 5 ... [illegible]

[illegible] ... n. 20 ... [illegible]

[illegible] ... 1756 ... [illegible]

[illegible]

[illegible]

[illegible] Omnibus autem relatis ab [illegible] innorta [illegible] Haring[illegible] cap. 3 ... [illegible] volum. 2 ... [illegible] 28 ... [illegible] definitione existimo [illegible] accessoriis quae [illegible] obligatus manet. qua [illegible] lib. 2 sententiarum [illegible] 8. [illegible] lib. 2 inst. 4.o 95 ... Justiniano in principio institutionum hoc [illegible] 1. 4.o 22 part. §. Vero [illegible] Dialecti [illegible] et iuris doctrina [illegible] imprimis [illegible] et [illegible] illa [illegible] Precis debendi. Cetera [illegible] operatione [illegible] singulis particulas explicare [illegible] debendi [illegible] generica, quae comprehendant [illegible] adiuvandum [illegible] sive solum [illegible] principaliter relacesioni [illegible]

[illegible] et institutionib. de duob. reis . quallo ſicanotio
ne iltiana [illegible] § [illegible] decis[illegible] [illegible] [illegible]
cuete p dare fideiuss. [illegible] ex promiss. [illegible] [illegible]
[illegible] Heris. 104 [illegible] [illegible] [illegible] 112 § 24 de Verbor.
obligatio nib. [illegible] [illegible] [illegible] Brisonius [illegible]
de Verborum signi. [illegible] [illegible] [illegible] incipiat
diter [illegible] [illegible] reis de Vendi, [illegible] [illegible]
[illegible] principaliter obligaver: [illegible] fidei iussio [illegible]
[illegible] principali obligationi [illegible] [illegible] 2. § 1. [illegible]
[illegible] [illegible] 94 [illegible] [illegible] [illegible] [illegible]
[illegible] de Verbor. obligatio nib. f. [illegible] [illegible] 24 nor
[illegible] in [illegible] 43. de iudicationib. §. fidei iussores [illegible] [illegible]
[illegible] fidei [illegible] obligatio é sequela principalis [illegible] [illegible]
[illegible] [illegible] 5. § [illegible] fidei iussorij 15. [illegible] [illegible]
actione [illegible] 93. [illegible] [illegible] [illegible] [illegible]
[illegible] ad donand[illegible] 15. [illegible] 48 [illegible] [illegible]
Verbis [illegible] fidei iussione [illegible] [illegible] securitatem [illegible]
[illegible] et [illegible] [illegible] [illegible] [illegible] [illegible]
fine [illegible] [illegible] [illegible] 1. [illegible] [illegible] [illegible] principio
institutionum hoc t. secundum [illegible] [illegible] [illegible] fidei
iussore, quambis alieno nomine obliget [illegible] [illegible] [illegible]
[illegible] obligationib. et alio nib. tamen de semetipso promiser debere,
Talis [illegible] 2 [illegible] [illegible] § 3. quoniam [illegible] [illegible] fideiussor prin
cipaliter [illegible] promiserat. [illegible] sicut [illegible] 6 [illegible] hoc t. [illegible] [illegible]
[illegible] [illegible] promittit [illegible] obligatur. [illegible] [illegible] stipulante.
89. de [illegible] obligationib. Advertani [illegible] [illegible] [illegible]
instrumento fidei iussionis a tabellionib. adijciatur. [illegible] clausulae
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] propria
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] de [illegible] [illegible] lib. 2. tractatu 8. 9 et n 4
[illegible] [illegible] infra n. 6.
Ad [illegible] in definitione [illegible] [illegible] quia obligatio fidei iussionis
[illegible] [illegible] sine [illegible] stipulatione celebrari [illegible] [illegible]
[illegible] Versicolo in summ[illegible] mandati [illegible] § Verum 1 [illegible]
[illegible] de obligationib. [illegible] [illegible] stipulationum § [illegible]
[illegible] de [illegible] obligationib. [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] codex 2 89 fidei iussorib. 12. ad ministra

nove revusari ... pertinentibus ... § 33 § in hac aux 3. ... de Episcopis et Clericis ... sup § 3. ... scriptum in instrumento inveniatur, alias fidei ... presumuntur. Ulti... § ult. instit. ... et in ceteris stipulationibus solet exprimi ... 30 ... V. ... § ... in instr. ... inutilib. ... in quo differt sti pulatio a ... simplici ... de solu ... § in persona ... de ... ordalda dicto lib. 5. cap. ... C. multa de solem nitate ista disputat Herin. hoc tractatu cap. 11 ... ... de legio ... solemnitas stipulationis sublata est ... lib. 5 compilationis ... schedula, ut in ... mento posse celebrari docent Gregorius in ... 6 ... Didacus Perez in l. ... lib. 3 ... Va la dicha obligacion. Matienzo in l. ... in fine et ibi Azebedus n. 19. ... Richardus in § ult. instit. hoc ... Olival. dicto cap. 4 ... C.

... Dignidad ... fidei iuris obligatio requirit ad obligationem principalis ... promi... obligationem principalis debet. Olu. ibi proxime lit. ... sicut ... debet, fidei iusso obligari ... 8. § ... 8. hoc ... l. ... 42 ... ut noto ... n. 17 et sequentibus. ... debet ... fragmentum ... pecunia ... anot. 5. ... Herin. in hoc tractatu cap. 18. n. 5. ... Bandazanea ... in ... 42 ... colligitur ... pecunia ... et ... obligatione ... notat ... ... licentia ... in l. 17 ... compil. ... Rodericus ... Antonini Diani ... moralium tractatu 5. miscellaneo resolutione 115. ubi ...

...

... [illegible] et individualis natae ...

... [illegible] ... ideo [illegible] obligationis. Iterum [illegible] alienos [illegible]

[illegible] ponitur. Ex obligatione Cuiacij ... 6. § [illegible] 35. ... 22

[illegible] ... nemo [illegible] ... [illegible]

[illegible] ... Ciceronis testimonijs ... [illegible]

... [illegible] ... diversae ... debet ... rei principalis

... rei ... obligationem ... [illegible] ... promittere ...

... principalis debet ... [illegible] ...

... obligatio, secunda vero accessoria ... [illegible]

... [illegible] ... principale ... fideiussor

16. hoc ... [illegible] ... fideiussoria obligatione

... obligationem duorum reorum, ... principaliter ...

... [illegible] ... Vo ... ... Uno [illegible]

Insuper ... [illegible] ... reorum obligatio ... [illegible]

... plures aut diversae [illegible] 18. §.

... [illegible] ... indicat ...

principio [illegible] ... [illegible] ... alterum ...

... dicitur obligatio posterior, accedere priori, ... [illegible]

... [illegible] ... accidendi, ut accidens ... [illegible]

gatione fideiussoris ... proprie accessoria; ... minus proprie ...

... inhaereat: ... accidente nova obligatione personali ...

... incorporatur nova obligatio in veteri.

... Notat etiam ... alias fideiussoria alienorum ... obligari ad

maiorem creditoris securitatem ... 1. §. ... pro ... De obligationibus

et actionibus ... proprio nomine obligari, et obligari ex propria causa

; alieno nomine obligari, et obligari causa aliena ... [illegible]

indebiti 47. de condictione indebiti ... Papinianus 28 ... mandati

... fideiussor ... [illegible] ... constituto ... [illegible]

alieno nomine obligati ... 28 ... pecunia constituta ... [illegible]

... fideiussoria obligatio ... [illegible] ... principali

... [illegible] sint personae principalis ... fideiussor ...

generaliter §. hoc 4. in ... principalis ... [illegible]

... constituere ... de constituta pecunia §. constituta ... [illegible]

... Notant ... Mart. ... [illegible] ...

n° 7 [illegible]

16 Mentione l. 4. l° n° 4. et 5. Pichar. in §. in personis institutionum de actionibus n. 34. Pier. Mauri. in hoc tractatu in prin. lib. 4. Merin. cap. 7. n. 19. et 20.

Adde [illegible] q. [illegible] dixi [illegible], q. fideiussoria obligatio [illegible] requirit precedentem obligationem [illegible] requirit [illegible] obligationem: Ut didici [illegible] ex [illegible] hactenus [illegible] pecunia [illegible] Ubi docet [illegible] valere si debitum sit [illegible], etiam si nullus appareat q. [illegible] debeat veluti si debitore [illegible] hereditas [illegible] debent, ut explicat Carreazegui [illegible] selectarum cap. 8. n. 1. [illegible] Papin. in l. [illegible] Ut [illegible] nomine [illegible] fidei [illegible] accipi posse [illegible] heres [illegible] pro legatis [illegible] sub [illegible] negat [illegible] fideiussore [illegible] neque [illegible] verba stipulationis fideiussoriae dirigi [illegible] in obligationis personam [illegible] ad heredem personam principalem [illegible] obligationem [illegible] fideiussoria obligatio [illegible].

[illegible] mortuo [illegible] hoc [illegible] sequenter [illegible] mortuo reo pro [illegible] et ante additam hereditatem, fideiussorem accipi posse [illegible] hereditas personae vice fungitur [illegible] in hac obligatione [illegible] persona obligatoria [illegible] principalis [illegible] sufficeret ut obligationem fideiussoriam [illegible] l. 28. q. Papinian. in dicta l. 5. [illegible]

[illegible]

[illegible] 28 [illegible] [illegible] [illegible] o
[illegible] lib. 65 [illegible] n° [illegible]
[illegible] n° 26 [illegible] n. [illegible] lib. 2° [illegible]
[illegible] n° 68.

[illegible] propter [illegible] fideiussio [illegible]
[illegible] alteratio, et [illegible] habilis [illegible] opinionis [illegible]
existimo; quod fideiussoria obligatio [illegible] principali [illegible]
[illegible] principalis, et per consequentiam [illegible]
principali obligatione. hoc decretorie [illegible] (Caj. lib.
[illegible] 9 §. Verius 3° [illegible] formulas fidei iussio [illegible]
[illegible] fide [illegible] esse iubes [illegible] Verba [illegible] persona obliga
[illegible] obligationis: et Iustinian. principio instituti. [illegible] tit.
[illegible] promittere [illegible] quo [illegible] fideiussor 57 [illegible] tit.
[illegible] fideiussore [illegible] reus principa-
lis: [illegible] Tullius 14 [illegible] tit. [illegible]
[illegible] periculo meo [illegible]
[illegible] §. 1° [illegible] debitori [illegible]
[illegible] liberat [illegible] persone [illegible]
[illegible] fideiussio accedat [illegible] part. 5 [illegible]
[illegible] definit [illegible] utilitate
[illegible] obligationis [illegible] remanent oblig[illegible] n° 9.
[illegible] Tambien el fiador como el deudor principal, quæ verba denotant
[illegible] por [illegible] accessione [illegible] reus principalis debendi;

Dixi principaliter, quod [illegible] referendum est ad verbum accessorium [illegible]
[illegible] denotat in hac obligatione [illegible] principale [illegible]
[illegible] accessorium [illegible] posset [illegible]
[illegible] accessorium [illegible] correlativum ad verbum principale [illegible] ( )
[illegible] altero [illegible] altera [illegible]
[illegible] lib. [illegible] Ult. [illegible] intopicis legalibus loco
76. Cardinalis Tuscus practicarum lit. C [illegible] 1041 [illegible]
in locis [illegible] loco 79) [illegible] verbum principa-
liter poterit [illegible] ideo adijcimus [illegible]
[illegible] magis [illegible] essentia diff[illegible] 23.
fideiussorie et principalis obligationis.

[illegible] obligatur quod ubi reus principalis obligatur [illegible]
fideiussor obligari [illegible] principalis [illegible]

Caterum

[illegible] etiam amplius fideiussorem obligari valere l. fid. [illegible] hoc tit. huius regulae multa et frequentissima in iure exempla quae desummi ponunt [illegible] exceptione 7. dec. praeceptionibus et ex aliis quas exponam infra [illegible] n.° 17. illud tamen in pr[illegible] difficile videri poterit quod accurrit [illegible] futurae obligationi fideiussorem accedere posse, sit enim actionis nomine quam creditor [illegible] reus principalis [illegible] habet [illegible] habiturus [illegible] l. pro [illegible] stipulatus [illegible] in fine l. stipulatus 44. hoc tit. § fideiussor [illegible] 3. inst. [illegible] 3. cod. tit. l. 6. tit. 12 part. [illegible] dicta [illegible] inter obligationes [illegible] fideiussorem [illegible] quae proponitur in l. [illegible] ad modum 38 de iudiciis quam illustrant Roder. [illegible] alegatione 3 n.° 5 Mol. de primogen. lib. 3 cap. [illegible] [illegible] Vbiadenses [illegible] in § 1. institutionum de obligationibus quae ex [illegible] n.° 42 [illegible] lib. 9. [illegible] Pepin. in l. [illegible] 50. [illegible]

[illegible]

[illegible]

[illegible] iure, [illegible] praecedentis principalis obligatio [illegible]
qualis [illegible] modo aliquando [illegible] et [illegible]
[illegible] ut docet Bart. in l. 4 [illegible] tamen fideiu
[illegible] principalis [illegible]
[illegible] principali obligationis, evanescit fideiussoria
obligatio [illegible] deficiente causa [illegible]
[illegible] 136 [illegible] principali effec.
[illegible] quaerendum [illegible] fideiussore
[illegible] antequam debeat [illegible] principalis. [illegible]
[illegible] omnino obligatur [illegible] modo [illegible]
obligetur; [illegible] pecuniam quam mutuo acceperis [illegible]
[illegible] l. 32 § ult. ff. de oblig. [illegible] 6 n° 12 [illegible]
[illegible] in his casibus fideiussor [illegible] accedit futurae [illegible]
obligationi; [illegible] fideiussio ante principalem
[illegible] obligationem [illegible] ita [illegible] licet [illegible]
modo [illegible] in hoc tractatu cap. 10 [illegible] n° 76 cum multis [illegible]
[illegible] n° 186 [illegible] n° 22 [illegible] Maur. in eodem tractatu
secunda parte [illegible] Richar. in dicto § [illegible] n° 5 [illegible] Donellus
lib. 15 cap. 4 [illegible] lib. 4 [illegible] eodem loco [illegible]
Menchaca illustrium cap. 40 n° 8 [illegible] 28 [illegible]
[illegible] lib. commentariorum cap. 6 n. 10

[illegible] inter fideiussorem et mandatorem: quo
[illegible] fideiussor [illegible] praecedere obligatione [illegible] ut dixi n° proximo [illegible]
[illegible] a [illegible] pecunia debeatur principali, mandat creditori ut sua
periculo credat l. si vero 12 § [illegible] ff. mandati [illegible] obli
gatio, mandator interveniat, [illegible] debitorem [illegible]
futurum [illegible] credenti [illegible] § 1 ff. [illegible] est
etiam [illegible] [illegible] fideiussor [illegible] obligari nisi [illegible]
[illegible] ut dixi supra n. 8; mandator [illegible] nudo consensu obligatur et
[illegible] l. si mandavero 22 § [illegible] 10 l. si
[illegible] 32 § 1 ff. mandati [illegible] Fux. [illegible]
[illegible] cap. 1 [illegible] Donellus et [illegible] lib. 15 cap. 4 [illegible]
[illegible] n° 6 Maur. [illegible] eodem tractatu [illegible] cap.
3 [illegible] principalis obligationis [illegible]
cedere [illegible]
§ 1 [illegible] notant Richar. in § [illegible] n° 2 [illegible]
[illegible] in hoc tractatu cap. 18 n° 2 et 5.

n. 12

n. 13

... deffinitione ... manet q. denotat perficiendo ... principalis obligatio. Cum ... permanentia ad ipsam ... refert ... Cicer. lib. 1 in Verrem, manere in ... 23 ... hoc ... principalis obligatio manere ... fideiussoria obligatio intercedat ... electione ... indicata. l. 5. §. Satis acceptio ... de ... Oblig. l. ... certum ... l. 23. ...

... eius actionis ... idque ut ... obligatio magis ... 9 actionem ... haec ... de Alienum ab animo novandi ... novationibus notant ... ho. ... n° 66, ... cap. ... Valer. ... in ... Pichar. in ... n° ... Valena ... cap° ex n° 30 ... tractatu ... part. ... 3 ... Volum. ... selectarum disp. 78 ... in notabilis ... Valen. lib. 1 illustr. tractatum ... cap. 8 ex n° 7. ... ex principio recte deducunt diff. inter fideiussores et expromissores: expromissor ... qui ... alienam obligationem ... aliud ... se ... mandato et tamen ... fideiussor, qui ... intercedit ac ... principaliter, ... obligationem ... liberat ... principalis obligatus ... erat obligatus, ... causa ... facit obligatio propria ... nullo ab obligato ... ita Alciat. lib. 1° parergon cap. 1°. Cuius rei exempla summi possunt ex diversis ... in ... de dolo ... de ... conditione ... l. ult. ... senatus consultum Macedonianum l. si vero 6 4 § ... soluto matrimonio l. ... libertinus § 7. de operis libertorum, ubi diserte ... distinguuntur ... expromissor et fideiussor ut ... de pignoratitia actione l. ... de obtrahenda emptione l. 5 ... § ... exceptione 8. ... quaquam ... longe ... pro expromissore accipiatur ... § ... dicatur ... l. ... novatione ... nono introducendi ex promissoris ... tale ... Vacl. ... cap 48 lit. A ... 234 ... de ... ad leges ... in fin. ... de fideiussoribus cap. 4 ...

... nec vero ... insignis alia ... fideiussores et expromissores ... obligationis pertinet et ad eandem radice ... fideiussores ... plures simul ... obligationem

accepti insolidum tenentur et sinihil inter eos actum sit. § 1. inter
L. si ff. § si plures inst. 3 hoc t. Cai. lib. 2 inst. § 4 § creditor. § 4
part. §. Novo tamen facilius tractabo cap. 2 § unico. Expromissores
[illegible] singuli [illegible] tenentur [illegible] aliena [illegible]
[illegible] § [illegible] senatus [illegible] Velleiani [illegible]
[illegible] expromissores) ad partem tenentur nisi aliquid interesset
insolidum quo rei [illegible] intra bubi [illegible]
[illegible] principales [illegible] nomine et causa obligantur, quare regula
[illegible] ad partem [illegible] tenetur. Fideiussores vero accedunt
alienae obligationi, [illegible] principalis [illegible] singuli in
solidum accedunt, [illegible] nulla est interest [illegible] diuidi deue
at, quare ubi tenentur insolidum tenentur fideiussores [illegible]
[illegible] etiam insolidum tenentur. l. ult. ff quod iussu. et man
datores in l. si mandatu §. § Paulus 2° ff mandati l. § 4° 12 part.
§. quoniam in mandatoribus et iubentibus singuli [illegible] fuit ut singuli
insolidum tenerentur, nemo [illegible] propria te mandat, seu obligatio man
datoris ex facto mandandi oritur, Ant. Fab. in dicta l. ult. § 1 Val.
en[illegible] lib. 1 [illegible] tractatu 4° in principio et cap. 8° per totum. Hodie
tamen [illegible] hec diff.e abolita [illegible] 4° [illegible] §. [illegible]
in qua indistincte sancitur, [illegible] obligantur, pro virili obligatus censeri
[illegible] specialiter [illegible] dictum sit. [illegible] duos reos quam duos fi
deiussores aut mandatores [illegible]. [illegible] ubi lex indistincte nec nos
distinguere debemus l. de pretio §. de publiciana, notant ad [illegible]
Greg. in dicta l. §. [illegible] Matient. in dicta l. 1° [illegible] [illegible] et
[illegible] ibi [illegible] 6. n. 2 et 4° Pichar. in §. [illegible] n. 17 hoc t. Val.
dicto cap. 8 n. 8. [illegible] Gut. 1 part. de iuram.
[illegible] cap. 3 n. 10
        ff [illegible] exigant ad fidei iussoris substantiam,
mandatum, patientiam, [illegible] principalis debitoris, qua ob
[illegible] adiciunt disquisitiones quas excogitant. hec [illegible] debitori man
dato patientiae. inde [illegible] notant di[illegible] fideiussorem a b. [illegible]
[illegible] fideiussor sit qui mandatu debitoris intercedit: sponsor vero qui
sponte accedit aliene obligationi ad [illegible] Iustiniani [illegible]
nouella 4° in principio ubi fideiussoris et sponsoris meminit. Colli
gentes [illegible] pro dictam diff. ita Accur. in dicta nouel. 4. [illegible] lib.
1° [illegible] cap. 2° [illegible] in hoc tractatu n. 5 Maur. [illegible] 1 part. de
fideiussoribus cap. 5° et alij apud [illegible] volum. 2 [illegible]

15

156 tesi i° lit. A. Giulticz cuos refert Sicca in seguen. Hor. cap. 3° n° 32. Cra hanc diff. 3. Crebrina, cuto Cx eod. Herin. Ubi Aspimo n° 33. Pux. additiaz nouellaz 4° in tit. Rich. in Rubr. tri. q. n° 2° Tual. dicto lib. 15 cap. 8 lit. B. cuz 9 ut ipsi notant sponsor pro fideiussore indistincte summitur apud probos latinitatis auctores, tum q° sine iuris captione in partem mandatorz debitoris principalis ad fideiussionem requiritur ut ex sequenti ratiocinatione constabit.

1° q° ut dicitur in l. fideiussore 30 [illegible] hoc ff. potest efficaciter fideiubere pro absente et ignorante, ita pro furioso et infante, l. si pro bonis. [illegible] in fine de [illegible] l. Marcellus 25 l. si curator furioso hoc ff. et pro hereditate iacente l. mortuo reo hoc ff. si in his casibus nullus assensus aut mandatum debitoris accedere potest, ergo sine mandato et pacientia accedere potest fideiussor. Iuxta magis e[illegible] fideiussio [illegible] l. sine remunerandi 6. [illegible] l. si pro te 4 et l. si fide. 9 3. ff. mandati, l. Alit. C. de negotiis [illegible] Dummodo donandi [illegible] [illegible] [illegible] iuris, [illegible] fideiussores appellare eos, si tam inscienter dant, quod absurdum excogitari [illegible] est sententia fideiussoris mandatum [illegible] [illegible] [illegible] indicta nouel. 4 et in authentica [illegible] [illegible] [illegible] ubi pro debitoribus eidem [illegible] [illegible] et sponsor [illegible] respondent. ibi [illegible] fideiussores, et sponsores [illegible] [illegible] [illegible] idem significat [illegible] [illegible] ut recte sentit [illegible] sup. dicta nouel. 4.

Ex posita [illegible] [illegible] superest indagare an etiam competenda [illegible] fideiussore [illegible] [illegible] [illegible] fideiubet: [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] alius q[illegible] principaliter [illegible] [illegible] debito [illegible] [illegible] fideiussore accipi fideiussorem [illegible] [illegible] [illegible] l. Greca [illegible] § ult. hoc ff. [illegible] ut securius creditori [illegible] [illegible] [illegible] [illegible] ratione [illegible] [illegible] [illegible] [illegible] [illegible] subsidiabant. [illegible] lib. 16 [illegible] [illegible] cap. 10 [illegible] [illegible] [illegible] dicto lib. 15 cap. 8 lit. [illegible] Menoch. lib. 2 [illegible] cap. 40 n° 9. Herin. in hoc tractatu cap. 4 [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

mus fideiussorum reus vero debitor fideiussoris omnes rei principalis
fuerit idcirco ad iure defenderunt, ut inter eos et secundum actio
dividatur ex Epist. divi Adrian, nec solummodo ut tum ante eam l. pro
parte eas de Tutag. ff. de Tutor. et. ar. dicta l. 27 § 1. ibi tamen eadem ratio
ac dit. Mellens, et si fideiussor ex potiore fideiussoribus neque predic.
etiam Epist. locum habere ut Julio; utrumque vocem Florian cap. 7
2ae partis n.° 13 et ibi tunc casus expiquntur: 1., 2., 3., et 4.us
Pro altera videlicet evenit, et pro 4.° succedant in veritatis auxilio.
si creditor non posit debitum ad exigere et sequitiatur eum fideius
sore uti contra tunc vero desiderabit ut cum ceteris, divisa actione agat
ex parte hac pro qua fideiussio dedit, quia tunc non concurrit cum suo principali sed
cum ceteris confideiussoribus sui principalis ergo quemadmodum alternus ille posset
objicere beneficium divisionis ita et poterit eius fideiussor in cuius locum sub
rogatus arrum. expl. exempto de fideiussoribus. Virgil. cautioribus. ceterum si qu
ibus in re Vel fideiussor alio datus exceptiantur neuter predicto beneficio
uti poterit ab altero respectu alterius nomine fideiussor in loco rei principa
lis dict. l. si plures § Ult.° sane si Florentina lectio defendenda e.
in cuius sensus action aferri et. qua hic. Si Vulgata sequamur con
vetores difficultates; quid, egetur, si fideiussor neque fuerit et fideiussori
et autores Vulgatam magis convenire cum vulgari dicendi modo veri. nec
Lectorum; Pr. Diversati.

§ Unicus in quantum fideiussor Obligetur:

Prelibationes ocasione definitionis alerasque tractationis nostre
principia, Petantur prelibavimus, nunc competentius erit pro intergro
positis singulis enodare que ad absolutiorem cognitionem eius conducant, et inde
nec a tui nata fideiussione recedamus examinare oportet documentum illud
fideiussorem in plus aut in duriorem causam obligari non posse, quam reus pri
ncipalis obligatus sit. § fideiussores Instit.° hoc tit.° l. 7 tit.° 12 part 5. Her
menocultus in promptuario lib. 5 tit.° 6 qui illustrant ulterius de fideiussoribus
cap. 14 cum n.° 9. Mauer. Arep. eode tractatu 2 part principali cap. 3.°
Porro tres Pinel. in rub. C. de rescindenda venditione 1.° 1 art. cap. 3.°
ex n.° 18. Fater. Menchaca illustr. cap. 40 n.° 6 Teutler Volum. 2.°
selectar. disp. 28. tesi 4.° Osual. ad Donel. lib. 15 cap. 48 lit. I
Pet... ad Fabrum lib. 2.° tractatu exportorum Lareat. lib. 1.° Selectarum
cap. 3.° n.° 11 Pichar. indicto § fideiussores Gregor. in dict. l. 7 part
et alii infra referendi.

... Cap.

, ... in eius dubeat dicti fideiussores ad quinaria ... accedere ... ultra ... debita ... accessio l. rogat ... mandati ... si ultra ... hoc ... § fideiussores ... eodem ... 7. part. Merlin in ... memoriis ... n° 60 ... ... tom. ... variar. ... n° ... solet tamen dubitari inter ... celebris ... an fideiussor ... respondet ad ... quantitatem teneatur? ... obligata ... auctoritate ... 7 ... quantitatem ... constituit ad ... quantitatem obligatur ... maiorem summam promisit ... principali debebat. ...) ... stipulatio habet ... ... dividua ... l. in stipulationib; 54. ... § ... obliga.) ... minorem in maiori ... § ... interstipulante ... 83 § diversa ... eodem ... notare ... variar. lib. ... Variar. cap. ... § et 6. et cap. ult. n° 7. ergo fideiussor ... respondet de ... promitit ... ... dicto tractatu ... § ... fideiussio ... summa ... in forma ... inutilem ... ... et ... sequens ... in forma ... ... dicto ... stipulanti ... probat ... sententia ... ... ultra ... hoc ... circa ... ... lib. 19. observationum cap. ... Schifor. ... proxime ... 4 ... quomodocumque ... mandatario ... ... quaestio ... mandatum erat; et ... averunt in ... mandatorum quantitate mandatorem ... teneri; ergo ... ... quantitate ... ... probat ... gatur 33. ... mandati ... expressit ... docet eum ... rogatus ... ut fideiuberet pro aliquo, si fideiussit in minore summa, recte teneri; ... si in maiori summa fideiussit, mandati agere posse ... quantitate. ... similiter ... in fin. ... ibi ... sequenti ... de pecunia constituta ... ... nec ... ... Schif. ... proxime ... 4 in ... obligari; ... falsa ... ... constituit ... obligare ... ... quantitate ... sententiam, ... auctoribus ... ... et ... ... lib. 6. ... cap. 5. Alciat. lib. ... cap. 8. Fontanela de pactis nuptialibus claus. 4° ... 1 ... n° 35. quambis ... Hier. de fideiussoribus n° 291

Continu

Covarruvias lib. 6. ... mentariorum Cap. 6 n. 4 ... acriter ... tractavit

q. per totum ... Nec obstat ... Graece ... §. illud ... hoc tit.o ...

... muneris ... omnino ...

... indurioren causam adhibita, placuit ... omnino ...

... ceterum in leviorem causam ... hoc dictum

... in principio ... quasi ... unde infert ...

... in minori summa ... docet ...

... sequenti ... hoc

... deducunt autores ... qui plus promittit quam debet

... principalis ... promittat ... in tempore omnino

nihil debere ... licet

... facilis ... huius difficultatis solutio primo ...

... Alexandri ... omni-

no pro omnino ... lib. ... diverso sane sensu ...

omnino ... negatio ... omnino ...

... obligandi ... a bona ... dicere

omnino non pro omnimodo ... probat ... Herin. ... cap. 24

n. 86 ... omnimodo non ... expresse ...

totum obligationem ... valere ... in parte ... hic

non ... decretorius ... praedictus auctor ... quae

... nihil desumitur ex ...

... inferiorem causam intercedunt omnino non obligari ...

... in principio ... negari ... in effectu indurioren causam ...

... summa fide iussor ... sive ... ad concurrentem

quantitatem ... iuris ... interpretatione ...

... inferiorem ... in ... ...

... fideiussorem ... minorem summam accipi ... parte

obligationis ... minus debeat quam principalis l. fideiussor ...

ff. ... §. sive ... l. mulier ... in ... docetur ... l. ...

... per quam ... l. 7 ... 4 ... 12 ... 5 ... 9 ...

... tamen dixit in maiorem summam non bene accipi ... illud ...

... hoc ... esset ... medium ...

... hoc ... minime probari expresse in summis fideiussione ...

... Ceteri ... apud Rich. Hering. ... et alios superi-

orum laudato ...

... Respondit ... secundo ... principio fideiussorem ... pro co prin-

cipali

[illegible]

vale n' non ita [illegible] et [illegible] tempore debeat dicta... 7. H. 12
[illegible] §. dicto 3 fideiussores hoc [illegible] Attilii reus inde debet; [illegible]
[illegible] in [illegible] accipiant pt. l. Graece §. §. illud [illegible] 1. ff.
[illegible] §. si [illegible] 2° hoc tit.° nec [illegible] dicimus de tempore de [illegible]
[illegible] [illegible] indulgentia [illegible] tempore [illegible] [illegible]
[illegible] promisit [illegible] quo venit [illegible]
[illegible] ex [illegible] pervenire l. cum [illegible] §. quoties l. [illegible] 137 §. cum
ita [illegible] ob [illegible] eandem §. Ult.° [illegible] a principio principalis [illegible]
[illegible] se daturum promisit, et fideiussorem dedit [illegible] moraretur
fideiussor [illegible] quae [illegible] principalis [illegible] [illegible] quae
quae non temporis [illegible] nec [illegible] principalis [illegible] fideiussor [illegible]
tit.° [illegible] principalis [illegible] se daturum fore
[illegible] promisit, fideiussorem [illegible] Romae agentem, fideiussor [illegible]
[illegible] quae [illegible] posset pervenire [illegible] tamen ad tempus [illegible]
fideiussoriae obligationis l. [illegible] 45. §. Ult.° hoc tit.° ubi cum ingenio
[illegible] Papin. fideiussoriam obligationem [illegible] conditione ex persona
[illegible] rei; [illegible] principalis, ne prius moriatur fideiussor, quam
ipse [illegible] fideiussor [illegible] pecuniam [illegible] repraesentare
[illegible] prius quam illud possit pervenire. ut exponunt doct. Donel. [illegible]
[illegible] Capue n.° 5. et 6 de eo [illegible] Cap. tractatu 3.
ad africanum et lib. 27. Papin. indicta l. 49. §. Ult.° adendi [illegible] [illegible]
in hoc tractatu [illegible] ex n.° 14 Schif. dicto lib. [illegible] tractatu [illegible]
in tempore [illegible] et durior [illegible] causa, si ad annum debeat reus
principalis et fideiussor ad duos annos accipiat. et si pure debeat
fideiussor accipiat in diem, [illegible] sub conditione l. Graece §. illud in fine
hoc tit.° [illegible] si reus debeat sub conditione, si navis ex Asia venerit, et
fideiussor accipiat simul sub eadem conditione et alia: quomodo debet
sub duabus conditionibus copulative debet quam [illegible] una, siquidem reus
[illegible] adveniente, et fideiussor non debet [illegible] impleta [illegible]
[illegible] si fideiussor sub duabus conditionibus acceptus sit non copulative [illegible] disiunctive
; ita fideiussor [illegible] si navis ex Asia venerit aut si Titius [illegible]
fuerit cum tamen [illegible] conditio reo [illegible] fuisset: tenebitur fideiussor, si
[illegible] conditio prius [illegible]. [illegible] conditionem [illegible], quam [illegible]
iecta fuit ut in proposito exemplo, illam si navis ex Asia venerit: [illegible]
diversa conditio prius extitit, dicendum [illegible] fideiussionem [illegible]
7 in principio et §. 1.° hoc tit.° [illegible] obligatio fideiussoria [illegible]
[illegible] habere, et [illegible] non [illegible] principali.

ibi̾ dicendu̾ ... vindicat obligare sicut reus et fideiussor ... [illegible] ... acipiatr: quippe ... fideiussor ... [illegible] ... fideiussoria obligationi ... principali ... [illegible] ... antequam conditio impleatur, obligatur fideiussor, et proinde ... [illegible] ... conditioni ... [illegible] ... hoc [illegible] in summa in toto hoc tractatu ... [illegible] ... fideiussor posit conveniri, quam reus princip. debeat [illegible] 57 hoc [illegible]

... [illegible] ...

... [illegible] ... fideiussorem accedere ... reo principali ... sub conditione obligato ... obligato fideiussorem ... [illegible] ... [illegible] ... docent ... [illegible] ... fideiussor ... [illegible] ... fideiussio ... [illegible] ... [illegible] ... fideiussor ... pure ... [illegible] ... obligari ... sub ... principali ... [illegible] ... doctrine ... fundamentum ... [illegible] ... merito ... [illegible] ... [illegible] ... doctrina ... bene ... intelligamus ... [illegible] ... [illegible] ... dicendum ... in [illegible] ... conditione obligatum ... [illegible] ... in eandem ... [illegible] ... hoc [illegible] tamen ... obligationi pure accedere: ... conditio ... [illegible] ... obligationi ... tacite ... [illegible] ... obligatio conditionalis ... conditiones ... tacite ... [illegible] ... alias conditionales ... [illegible] 99 de conditio ... demonstratio ... [illegible] ... debitum ... [illegible] ... tempus quo ... in casu ... [illegible] ... fideiussor accipitur ... [illegible] ... quam debeat reus princip. ... fideiussor ... [illegible] ... reo principali sub conditione obligato, fideiussorem pure accedere ... intelligendum ... quando ... [illegible] ... animo obligandi ... [illegible] ... quam reus princip. obligatus erat.

inferri ... fideiussorem ... obligari ... plus ... promittat. ... plus promittit quando ... fideiussor durius obligatur quam reus principalis debet ... fideiussoris ... [illegible] ... Veluti si reus debeat Stichum, et fideiussor promittat Stichum aut 10. ... si reus 10 debeat, fideiussor promittat 10 aut Stichum; ... obligatur ... [illegible] ... alium ... promi...

C

46

ret quam reus princip. debet, l. Graece. § rigs. l. stichum 8. hoc tit. q. cum ad unum principalis teneatur in duo alternative obligari si pt. q. si altera deficiat altera in obligatione manet l. cum res 47 §. si stichus de legatis i. l. si stichum 16 de v. obligat. l. stichum 95 de solutionibus, & est obligatio alternativa dicitur speciei certa ut notavi in l. stipulatio. de individuis n. 289 in specie q. e in obligatione est in solutione: in alternativa vero utrumque corpus est in obligatione, unum in solutione l. 2 §. ed harum l. in executione 85 § pro parte de verborum oblig. hac extremam subtiliore quam vera, & ibi procedit in casu opposito, si in diverso; q. reus debeat stichum aut pamphilum, et fideiussor acceptatore circa stichum teneatur. l. riij q. accessionis 34 verisito q. ergo hoc tit.; q. expone: si illis, melius est unum solum debere, quam utrumque sub alternatione, cum mors unius illo perimatur sua oblig. l. quod te mihi §. de rebus cred. l. ex legati 23 & i. D. oblig. deinde q. non aliud debet fideiussor quam princip.; cum principali debeat utrumque. et fideiu. alterum ex illis ut docte admonet Cuja. lib. 72 Pauli ad edictum in dicta l. 34 denique q. electionis q. habet debitor principalis, paratur deliberationi ex servi morte, quam habet fideiussor, minoris considerationis est; qua pro ores in electione sua acceptus dicitur dicta l. 34 et Cuja. ad eam. Cetera exemplo assumi possunt ex dicta l. Graece. §. idem Iulianus q. cum duo ... fideiussor 16 in princ. l. si stichum 38 hoc tit. ne in facilibus immoremur

№ 23.

Quarto infertur nec loco posse fideiussorem promittere quam debet reus princip. quare si pure reus princip. debeat et fideiussor intercedat ad diem, vel in aliquo loco l. fideiussor 16 non obligatur. §. accepto loco hoc tit. dict. l. 7 inst. quoniam alioqui fideiussor iure acceptus est conveniendus ubi domicilium ipse habet ut est provari ex l. si tutela mento l. 7 §. ult. hoc tit. l. li. tim. §. cum pupilli salvam fore et se quitur forum rei quamvis ille esit clericus, miles ... ut do cet Clerinq. in hoc tractatu cap. 3 expo. §. illud tamen pro petitione commendandum est cum fideiussor pro reo obligatur ad praestandum certo loco si non ... in eodem loco teneri, ut colligitur ex l. si ut proponitur 61 hoc tit. iuncta explicatione Cuiaci lib. 15 responsorum Pauli ad eandem.

№ 4

Superiori propositioni consequens est ... illa inspectio an obligatio fideiussoria ab initio ad certam quantitatem accepta ex post facto excrescere possit in relatione ad usuras quae debentur ex mora rei principalis (quas nos dicimus legittimum interesse) et adversus quae ex cessatione ... solvendo debetur. Attendendum est quod non docet iuris regula moram suam ...

nocere

q. nocere l. in idemnatione 173 § unicuiq. de regulis iuris, quare nec mora fideiussoris reo principali nocet, nec mora rei principalis nocet fideiussori. ff. unicuiq. suus l. si pupillus 127 & l. fin. oblig. iuncta l. cum alius 49 §. l. eodem l. si venientis 44 de obligationibus, in eo ex eadem fideiussoris mora ... ; q. obligatio ... tantum per principale, et ... post multos recte docet Vering. in hoc tractatu cap. 14 n. 152. alias adducit Cap. tractatu 3. sed affirmans in l. contraria cause ... certo loco c. l. 1828. quaest. Papin. in l. stricte 95 de solutionibus: Fideiussor ... pro promissore ... ante moram rei principalis, principalis in ... liberatur. morte ... l. q. termini ... de rebus creditis et ... de d. oblig. ... fideiussor ipse liberatur. l. si fideiussor l. 9. de dolo q. deficiente obligatione principali deficit per consequentiam accessoria. l. cum principalis, de reg. iur. l. q. maxime ... l. in fundo 37 de rei vindicatione actio de dolo in fideiussorem datur ... l. 19. sive propter dolum ut in l. 1. de dolo ut patiatur restitui ... se ... obligationem qua antea tenebatur ad evitandam dolum ... ignominiam q. e ... boni oratoris ... restitutionem, ... utile ... acci... ... dit q. fideiussorem, ut ... quo modo interpretandi ff. ... in l. mora 32 §. ult. de usuris l. cum alius 49 l. mora 88 in fin. l. si servum 91 §. nunc videamus de V. oblig. l. cum 138. §. penult. l. stricte 95. §. 1. de solutionibus ut exponit Cap. tractatu 7. ... in dicta l. 38 §. penult. et ... loci ... longe ... Bris. de solut. lib. 2 ... de lite ... exponunt ... lib. 1 ... Donati ... l. 19. de dolo ... in dict. l. 88 ... oblig. Vering. in hoc tractatu cap. 12 ... pag. mihi 75. & sequentibus.

E ... mora rei principalis ... nocet fideiussori ad hoc ut eius obligatio aut ... nocet tamen ... per moram ... principalis ... mora rei ... nocere ... l. ... 57 §. ... l. 9. 24 §. de ... l. cum filius 49. l. mora 88 de V. oblig. ... iuris ... oblig. ... principali ... et ... obligationem ... ut ... l. si servum 91 §. nunc videamus ... actiones ...

Recognitio [illegible]

crater [illegible] indicta l. [illegible] capue 28. faber in [illegible] et donelus n. 11 c. de Cod. tractatu 8. ad aphc. [illegible] 28 § penult. de solutio [illegible] [illegible] in tractatu cap. 24 n.° 156. [illegible] durior [illegible] videtur obligatio fideiussoris [illegible] propter moram principalis; cuius [illegible] obligatio si duret propter moram fideiussoris [illegible] necesse est [illegible] obligationis [illegible] fideiussoris [illegible] principali, [illegible] dependet a fideiussoria, prosequitur [illegible] indicta l. 173 § [illegible] de regulis iuris,

[illegible] dicendum est [illegible] mora, fecerit [illegible] et per hoc eius obligatio durare, velut in [illegible] l. 99 [illegible] mora [illegible] 4. [illegible] § [illegible] [illegible] [illegible] 49 § [illegible] pena [illegible] [illegible] [illegible] fideiussor ad quantitatem promissam tantum tenebitur [illegible] interesse et penam l. fideiussores 68 § 1.° [illegible] et [illegible] fideiussio, [illegible] tantum [illegible] quantum promissum fuit l. [illegible] 99 de [illegible] nec ex mora [illegible] debet [illegible] l. [illegible] 173 § [illegible] de regulis iuris. [illegible] [illegible] fideiussori [illegible] [illegible] fideiussor [illegible] [illegible] intercessit ut fundat [illegible] tractatu 2 parte [illegible] ab [illegible] generaliter [illegible] ut sensit post multos [illegible] alleg. 16. n. 20. [illegible] obligationis principalis, [illegible] debeat [illegible] obligationis [illegible] iudicis velut usuras [illegible] [illegible] l. [illegible] 3. C.° de fideiussoribus tutorum l. si mandator [illegible] l. [illegible] § [illegible] emptore et venditore l. fideiussor 10. [illegible] § [illegible] locati, l. [illegible] § 1.° [illegible] l. [illegible] § [illegible] l. [illegible] legatorum [illegible] l. [illegible] 12 [illegible] l. 2 § penult. et ult. ff de administratione [illegible] pertinentium [illegible] de pena dicendum est [illegible] fideiussor [illegible] [illegible] hoc [illegible] valet [illegible] tenentur ac [illegible] [illegible] fideiussores 68. hoc [illegible] [illegible] de periculo [illegible] lib. 11 l. 2 ff de [illegible] l. [illegible] § [illegible] l. [illegible] 17 § [illegible] ff ad [illegible] ad senatus [illegible] [illegible] cap. 21 n.° 29 [illegible] ad penam fideiussorem [illegible] [illegible] causa intervenit. ego [illegible] testimoniis [illegible] existimo teneri [illegible] in penam [illegible]

inaloz q. ex ipso descendentes eadem fide iussor ... excitare ...
a dimittat quae ex delicto rei principalis implicite ut notat Maur. ...
proxime dicto cap. 4. cum hic a causa principalis obligationis omnino
extranea sit ut agnoscit post alios D. Hering. ... proxime n. 135.

Hinc

doctrinae negotium pacesit difficile Africani responsum in l. Centum capue
... certo loco; ex quo provenit dicti, ... in fideiu...
...obligatione ... interced... ... Titius stipulatus
fuit similiter ... cum adiectione ... loci ...
... ...
... promisit: sin vero ... accedat
... adiectione; ... accede-
re noluit: ... in summam promis...
... sine mora Capuae
... pecunia ...
... arbitrio iudicis ... fideiussor accessit ...
... interprete ... cum mora facta
sit, quaeritur ... pecunia? Respondet Afri-
canus ... a fideiussore, ut ab ipso promissore; si ...
... petitum ... n. 20 ... sibi
mora facta alii cum adiectione loci ... Titius ...
quanti actoris interesset Capuae solvere, mora autem rei principalis
non nocere fideiussori, nec ideo crescere eius obligationem ex arbitrio
iudicis: ita ... si reus ... Capuae mora ... crescit
obligatio, ... ut fideiussoria crescit, ... principio
... fideiussor fecit moram. ... suo tempore ...
... creditor vero sine culpa ... fideiussor
etiam ... et postea ... inhoc casu adest
mora fideiussoris et principalis. Ex quo ... mora ...
... alterius, ... ut recte exponit Cuiac. in
dicta l. Centum Capuae. ut proinde Africanus ... doctrina
... obiectionem quae opponi posset ... si quis Centum promi-
...reos; fideiussorem ... fideiussor ... implicite ...
... teneri ... tenerideb... ad predictum ...
... q. accessit ad obligationem ...
usurarum specialiter et nominatim promissarum, ad duas obli

C

gationes accedit, quarum unaquaeque per se subsistit et sic utriusque obligationis nomine ex sua promissione tenetur. argum. ex. d. l. si ita ... loco § 1. hoc tit.º fundat. 3. c.ª de usuris. quod vero non interesse debet, in ratione socii non debetur ex obligatione, et ex arbitrio iudicis quorum alterum ab altero distat, l. si [illegible] q.ª 40 de iudiciis. unde in isto casu sorte soluta debentur usurae in nostro vero non debentur postquam sors soluta est neque ad interesse [illegible] l. ultim. de usuris cum loco: quod sortis solutione perimitur omnis obligatio, omnis actio, omnis [illegible] quare nulla superest iudicis potestas sive ad interesse sive ad usuras, quae in contractibus bonae fidei ex iudicis officio exiguntur. 4. ff. depositi. quod per solutionem 49. [illegible] sortis, de actio ibi [illegible] rationes et [illegible].

Ex quo, nimbis aliter [illegible] ...
dici insurgit difficultas, quod dixi sup. n.º 26. hicce [illegible] interesse [illegible] [illegible] obtinere, quae ex arbitrio iudicis [illegible] poterat, et [illegible] [illegible] [illegible] in effectu [illegible] dicat ut tene... Donel. in dicta l. Cerriz, ex n.º 15) in decreto [illegible] [illegible] [illegible] bonae fidei ad usuras quae debentur ex mora [illegible] [illegible] [illegible] locati [illegible] de poena [illegible], quae [illegible] [illegible] [illegible] in [illegible] [illegible] differentia inter usuras quae debentur ex mora in bonae fidei et interesse quod venit in alio et arbitrariis cum utrumque debeat ex [illegible] iudicis, si in bonae fidei [illegible] [illegible] [illegible] [illegible]: quando [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] n.º 15.

[illegible]

[illegible] [illegible] [illegible] interesse [illegible] [illegible] bonae fidei [illegible] [illegible] iudicis, [illegible] [illegible] venit ex arbitrio [illegible] [illegible] in [illegible] bonae fidei ex officio iudicis venit [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] in bonae fidei [illegible] [illegible] [illegible] venit [illegible]
[illegible] in usuris [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] in potestate iudicis an [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] formula
[illegible] videlicet [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] bona fide [illegible] [illegible] [illegible] [illegible] [illegible] loco [illegible] [illegible] [illegible] [illegible] [illegible] bonae fidei [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

moq. ac. accedit per d. quem in incrementum ... in arbitrio sero ... a d. ... dati iudicii ... stricti iuris e contra ca... cum ... ex causa ... quaq. inquo dam venit. ... ex paradice ... ita me ex pone. ... aliogn. ... incremen... accidit. idem ex ... ex ... redeunt ... quod ... stricti iuris ... de ... obligationem in arbitrio multo latius potestas iudici qua in ... formule prescriptae arbitrium ... explens et sine ... formula ... dependit ... accidente ut dixi quod ... incrementum ... arbitrium ... ideo ... obligavit ... fideiussore pro hoc incremento arbitrario ... et subtiliter ... explicarunt ... Donel. in ... ad eund. ... circa ... Davi Benedict ... noua leges ... pag. 823.

Quamvis ... in ... obligatio ... ut dixit ... lib. ... lect. cap. 9. ... rest. ad eund. lib. 2. tractatus 9. ... Velutis accedat ... pupillo naturaliter ... obligato ... civiliter et naturaliter obligati; ... pupillo pecunia exigi ... 10 ... obligati ... exigi ... fideiussori 26 §. fine ... hoc t.° ... minore 25. ... sub ... beneficio restitutionis ... de minoribus ... obligatio fideiussor ... restitutione ... 13. de minoribus ... exceptionibus 7. de exceptionibus ... de fideius. minorum ... in Collectaneis Barb. ... 12 part. 9. Et quamvis reus ... minoris ... debeat ... fideiussor potest obligare ... et ... tamen ... stricti ... fideiussor obligari ... fideiussor ... ut ... creditori, docent multi relati ... Richar. ... 13. in ... hoc t.°, Dominus Larreategui lib. ... selectarum cap. ... 3. n.° 11 ... et eleganter ... de ... cap. ... 4 ... 7 ... Teutler y Columna ... selectarum disp. 28. thesi 4, Donell. ... lib. 15 cap. 48. lit. K ... Hering. in hoc tractatu cap. 14 ... n.° 111 ... Laur. ... n.° 26 ...

C

...

nec in specie

Caput 2 quibus obligationibus fideiussor accedere possit.

Statim à limine docemur fideiussorem omni obligationi accedere posse l. 1 [illegible] hoc tit. § [illegible] inst. eodem tit. l. 5. n° 12 vers. § idest (ut primo modo exponit) cuius rei quae obligationi sive descendat ex contractu, aut quasi contractu, delicto, aut quasi delicto, aut ex fauisciarum [illegible] l. [illegible] 52, de oblig. et actionibus [illegible] [illegible] 9. § 1 et § et generaliter hoc tit. ut in [illegible] exemplariter [illegible] ex l. 1 hoc tit. ubi docet Pompon. fideiussorem accedere posse commodato, deposito, et ceteris contractibus qui re [illegible], qualis est [illegible] mutui l. si in [illegible] 54 l. Iranius 71 hoc tit. l. si mandator 8. [illegible] cum eo l. ult. in [illegible] de [illegible] vendenda emptione tan[illegible] quam [illegible] l. si ita. 5. 5. hoc tit. ubi promittens quicum ab initio valeret ex post facto confirmatum fuit, l. si quis proco 56. § si numos hoc tit. l. si ita utiliter [illegible] eorum [illegible], nec fideiussio tenet l. 2 [illegible] denique ex publicis ratiociniis, [illegible] dicto § si numos in deposito idem docemur in l. 1 § idem [illegible] dit 14 [illegible] sic to plane l. si fideiussor 30, ff. depositi. Etiam [illegible] ubi si [illegible] obligatio tenet et cum [illegible] interposita est fideiussio adeo recte accedit; quod si sine [illegible] [illegible], quam [illegible] oblig. elidit, per doli exceptionem l. 2. § circa de doli mali exceptione, fideiussor [illegible] obligatur l. si stipulatus 15, hoc tit. docent Alenchaca illustrium Cap. 40 n° 8. Ferinor in hoc tractatu Cap. 10 n° 63. 9 n° 7. recte docet posse fideiussorem accedere literarum obligationi postquam solemnis modus obligandi per scripturam inventus fuit; sive hic antiquus sit, sive a Iustiniano introductus in nova d. proclivior sum cum nro [illegible] inst. constitutionem de literarum obligationibus exponendo 19 [illegible] defensis lib. 2 Cap. 8. n° 12 [illegible] quaero quare in [illegible] 9. § 1 hoc tit. literarum obligatio omittatur: quamvis aliter censeat idem Ferinor dicto Cap. 10 n° 20, accedit etiam fideiussio contractibus qui consensu perficiuntur: videlicet contractui locationis et conductionis, l. 9 [illegible] fideiussor 53. l. quero 54 ff. locati l. cum colono 14. ff. [illegible] modis pignus [illegible] hypotheca solvitur, l. [illegible] 92 § fideiussores ff. [illegible] § 8. hoc tit. ubi docemur fideiussorem à colono datum totius [illegible] nomine, ad ciumi a mora per [illegible] teneri quia una obligatio est: quod est perpetuo memoriae [illegible] etiam in [illegible] tali idem probant [illegible] [illegible] 38. l. [illegible]

§ 4

§. i. ff. pro socio in mandato Cod. si mandatu § ult. ff. mandati de quo Pet. Fab. in l. sicut ecc 23 a 7 Ulat. matrim. Valenz. ib. in distric. tractatu 4 cap. 5. in d.ta emptione et venditione expone Venditoris accedit fideiussor cum pro emptore vendat de pretio solvendo l. g. Vendi di 19. l. Ut res ff. de d. venda emptione et vendit. inst. de renz. dic. tione. ex parte emptoris intercedit cum venditor evictione rem promi sit data fideiussore, quorum intercedat l. parte 72 de d. venda em ptione l. g. de rescindenda venditione l. si rerum 24 § ult. de actioni bi emptis l. cum simulatus 113. §. 2 de V. oblig. l. fideiussor 45. hoc t. de quo evictionis fideiussore quando et quatenus teneatur aut praestandus sit Bru Vendit ff. Hering. in suo tractatu cap. 10, ex n° 26 8. Maur. Prep. 1 pars principali sect. 2. cap. 8 alias 27 Morla in em porio ii g. in beg misis n° 10 6. Aviles ... c. 2 ... de rei vendenda venditione 2 pars. cap. 3. ex n° 43.

Accedere etiam pt. fideiussor quomodocumque reus principalis habeat sive ex veritate rerum [illegible] (veluti inquasi ...) [illegible] ideo accedit ... quae ex testam. descendit sive ex addictione hereditatis ... ... et legatorum nomine accedi ... l. 3. §. ult. ... quantis ff. ... in ... gestorum l. 3. § ult. cum seq. seguenti de negotiis ... et ... toto ... fideius. ... promutuo ... gestioni ... ... ex ... ... §. ult. ... indebiti 47 ... fideiussor. 59. de ... indebiti, quae ... ex ... ... l. sig. ... 7. in ... et §. 1 de oblig. et actionib. toto ... ... oblig. quae ex ... accedit ... fideiussor obligatio et debito, q. ex delicto descendit l. Graece ... §. ... hoc t. Veluti in actione furti et legis aquiliae ... nequid 7. §. ... deincendio ruina naufragio l. sig. ... 56. in fin. l. ... arco 70 §. ult. hoc t. Ubi hoc ... ; ... rem ... poena pecuniaria solvendam parti ... condemnandus ... fideiussorem illi ... dare q. civilis, pecuniaria ... ... condemnatio, l. ... 45. § ... de procuratoribus, sicut ... ... ut appellatur in l. 1. de incendio, ruina, naufragio ... vero ... ... popularis ... ex qua damnum privato irrogatur ... ... 56 hoc t. ... delinquentis ... ... velle ... ... ut alter, alterius indemnem praestet quo casu nec fideiussor ... ... et nocere ... de ... fideiussoris maleficiorum nomine ...

obligari, dicta l. si reo 70 §. ult.º q̃ latius exponunt Hip. de fideiussoribus Cap.º 105 Hering. Cod. tractatu Cap. 10 ex n.º 335. nec tantum obligationibus civilibus fideiussor accedere pt, sed etiam pretorijs l. Graeca 9. § qui hoc l.ª, q. l. una aut inter eis debet ex ff iudicium. Notant Ant. Tom. in tit. Ordinarium cap. 2. n.º 1. Teuchl. Volum.º 2. selectarum disp. 28. thesi 3. Hering. dicta Cap. 10 an.º 12 Maurus Areo. 2. part. principali n. 4 Cap. 35 & 36. Imo ut dixi superiori cap. n.º 16. accedit alij fideiussoris obligationi, ex quo sequitur etiam pro eo qui est mutuodatus fideiussorem accedere posse ut post Bart. & Alex. docent Valent. Harne. de fideiuss. Cap. 5 n.º 193. Hering. dicto cap. 10, n.º 275. Denique obligationi orta ex causa rei iudicatae fideiussor recte accedit l. 4 § si ex suentione 4 & si re iudicata: et cuicunque alij obligationi pro qua quis alteri obligatur, sicut dandum & faciendum ut concludit Vaz quez illustrium lib. 1.º illustrium cap. 40 n.º 8.

n.º 3.

Alio modo ut exponi quod docemur indicta l.ª hoc tt.º fideiussores omni obligationi accedere posse; hoc est cuicunque speciei obligationum. Volunt civili & naturali simul, qua sicut pecuniam efficaciter debet & exigi pt. circa quam nulla se offert difficultas ut recte censet Teuthlerus dicta thesi 3. sed etiam accedere obligationi naturali tantum; id est illi obligationi quae efficacem vim ad actionem producendam l. naturales 10 de obligationibus & actionibus sed solo vinculo rationis quod ex iure naturali descendit l. 1 Ithicum 95 §. naturalis desolutionibus cum similibus 84 §. 1 nam de regul. iuris. probant in specie d.ª in l. fideiussisse 6. in fin. cum l. sequenti ubi fideiussor 16. § sub illo 3. & § naturales ubi Marcellus 25. hoc tt.º §. fin. inst. hoc tt.º 7. § 4.º 12 vers. & effectus eius illa naturalis obligationis ne pecunia semel soluta repeti possit efficit ut ei fideiussor accedere valeat. dicta l. 7 § naturales. Inde valde mihi placet sententia nostri Picnar. indicto §. inod. n.º 14. q. docet non efficaciter in consuetis fideiussorem ad eam obligationem naturalem quae cum effectu recentiore est tam inanis sit et super vacua. Displicet autem Scurius, qui dum existimat fideiussorem intercedentem pro naturaliter obligato non obligari efficaciter nec alio modo quam reus principalis obligatus est. Verius enim procul dubio dicitur efficaciter fideiussorem obligari, cum sponte promittat ex quo obligatio civilis quaedam fideiussoria stipulatio ut D.º Heursius docent Cap. lib. 3. 35. quod iubiamus indicta l. 7 hoc tt.º Teuthlerus obiter proxime, Maur. Areo. dicta sect. 4 cap. 35. n.º 6. et cap. 36 n.º 7 & innumeri quos laudari in fine superioris capitis.

Utraque autem civili tantum obligationi fideiussor accedere posse, magni momenti est. Itaque huius est inter nostri iuris interpretes. civilis obligatio dicitur quae solo

iuris civilis rigore retineri et circula pereat lex, ita (l. si quis aliter 36

de verb. oblig.) verum quod civiliter debet, non debet; quandoquidem repeti potest quod

solutum est, licet civiliter debeatur. l. si non sortem 26. §. indebitum 3. l. quod exceptio

40 de condictione indebiti. Et quia obligatio nec in corpore est, sine effectu et

inanis, non potuit ei accedere fideiussor ut de constituto dicitur, in l. 3. §. 1. de pecunia

constituta. quod enim debet, potest se tueri exceptione, desinit debitor esse, ut Marcellus definit in l. Marcellus. de regul. iuris. igitur si ex iure censura iuris

desijt debitor esse principaliter nec fideiussor pro eo intervenire potuit. Huic maxime

calle iuris doctorum accedit auctoritas ... in l. stipulantis 15. in princip. hoc titulo

Ubi fideiussor accedit promisso obligatus est ex stipulatione sine causa

potest uti exceptione doli quam reus principaliter habet; quod eadem iniquitas quae

praebet uni exceptionem, praebet et alteri. nec obstabit si subtiliter

replicetur, exceptionem exceptio competit fideiussori, apparere mero iure con-

tineri fideiussoriam obligationem: quod ego non curo de modo quo valeat fideiussio;

constat sit sine viribus remanere; siquidem si efficax esset, efficaciter te-

neret fideiussorem, quamvis reus principaliter non esset efficaciter obligatus ut

de naturali obligatione dixi superiori numero. Et hoc modo, ne rerum tendamus

veteres iuris interpretes, et primos iurisprudentiae nostrae patres, praecipui

doctrina Accursij, Bartoli, et ceterorum in dicta l. 1. et in l. fideiussor 26.

§. fideiussor 3. hoc titulo, qui docent ad civilem obligationem fideiussorem accedere

posse; idem ut mero iure accedat, potest uti eadem exceptione quae reus.

pari denique argumento eandem doctrinam obtinent doctores in l. si quis 37. hoc titulo

l. 1. et mandatori 12. C. de non num. pecun. Ubi si fideiussor intercedat

pro eo, temporis exceptionem non numeratae pecuniae habet, in effectu tenetur,

quia eadem iniquitas quae reo suffragatur, prodest etiam fideiussori, secundum exposita

32. l. testam. 49. hoc titulo. Faciunt etiam et illa, quae Ubi nulla subest e-

quitas aut causa obligandi, fideiussio tenere non potest. l. si a reo 70 §. ult. hoc

titulo. velut si sub impossibili conditione principalis promisit l. si sub im-

possibile 29. hoc titulo. vel si promisit contra interdictum legis, l. cum lex 46. hoc titulo, N.

et in exemplis quae adducunt Menchac. illustrium cap. 40 n. 9. Herinn. in

suo tractatu cap. 10 ex n. 35.

Fatemur tamen in aliquo esse casus in quo pa-

ulisper tamen obligato fideiussor efficaciter accedere potest. Primus est, si obligatio

iure civili efficax sit, velut quia elapso est biennio, contra quod opponi potest exo-

ceptio non numeratae pecun. l. si vero §. C. de non num. pecun. tunc enim etiam

efficaciter oblig. ut docent cum iudicio Costa, in l. si ex cautione vel ex hi-

potheca data C. eodem tit. Fichar. in dicto §. inoffic. n. 18. in ... ...

non . intentia acit severa n debeur l. Graece q. § e . cord [illegible] hoc t l. 4 § . sieq Inventione de re iudicata sanctal. iulian. 63 de Jdictione indebiti Wesembechius dis videndus in Jmentarijs ad hunc tt n° 4. L'i reus q gravas erat exceptione qui sibi spectabat, fideiussor dedit videtur exceptioni renunciare arg. ex l. si sortem 26 § indebitum 3. de Idictione indeb. insumma, ubi obligatio civilis ne efecta é, q exceptione elidi pt, fideiussor adea n pt intervenire; ubi aute é efficax, recte pt accedere fideiussor, ut censent Pichar. dicto n° 18. Gregorius [illegible] 3. ix 99 l. in l. 9. tt 12. part. 5. Donel. et Cujac. lib. 15 cap. 49. lit. f. quam [illegible] sententia severe [illegible] Ant. Gom. l. tom. Variar. cap. 13 n° [illegible] Menochi. dicto cap. 40 n° 8. Tesauro [illegible] dicto. 28. Hering. dicto cap. [illegible] n° 2 Maur. Hisp. dicta 2. part. sect. 4. cap. 35.

n° 6.

Unde aute, obligato civilis et naturalis, [illegible] n pt accedere fideiussor, sic nomine dotis; nec [illegible] uxor aut socer, a marito p restituenda dote, fideiussores [illegible] ... [illegible] et 2. C. ne fideiussores dotiu[m] ... ubi dicitur, neque mulier, expressimaut credendus se [illegible] pro dote marito, n habet exigere intercessore p eos, ne casu p [illegible] in matrimonio [illegible]. Cui nos, [illegible] [illegible] n [illegible] vicenset Fontane de pactis nuptialibus clausula 7. [illegible] i part. l n° 7. quia mulier [illegible] pater [illegible] debent Hipotheca [illegible] rez dotis inducta, l. unica § et ut plenius C. de rei uxoriae actioni § [illegible] 29. inst. de actionib. ubi late [illegible] Pichar. Petr. Barb. in l. 3. part. n° 17 solutio matrimonio Fontanella dicto q. l. part. per totam expositio iac inferre marito cui dos promitti. [illegible] a socero aut ab ipsore aut a [illegible] dotante, fideiussores p solvenda dote exigere [illegible] [illegible] § si pater C. [illegible] et [illegible] dotis § 5. lo [illegible] tt [illegible] expositione cap. ad d. l. ne fideiussores dotiu[m] dentur, quamvis maritus n habeat dotare fideiussores, tamen soluto matrimonio [illegible] obligatione [illegible] nata recte [illegible], fideiussor intercedit l. fideiussor 7. de [illegible] ibi. [illegible] dos. Ante nuptias prestitavit cautio exigi pt, de restituenda si matrimoniu n sequatur; defecit [illegible] matrimonium [illegible] per [illegible] [illegible] quae impedit fideiussionis [illegible] l. [illegible] 77 § [illegible] Vinnio [illegible] de [illegible] et demonst. Ant. Gom. in l. 50 tauri n° 26 [illegible] [illegible] maritus [illegible] matrimonio [illegible] dotis [illegible] fideiussores [illegible] [illegible] et dispost. Gom. [illegible] fideiussores aut [illegible] neque cautiones n [illegible]. Dos [illegible], [illegible] aut mercatore, ut de [illegible] onera matrimonij sustinentis, [illegible] [illegible] donationib. [illegible] l. 29 [illegible] Palacio [illegible] indicto cap. [illegible] notabili, § [illegible] [illegible] Barb. ibidem n° 3. [illegible] dote [illegible] [illegible] maritus recte fideiussori dat, dicto cap. [illegible] ubi

Palacio

Calderin Rud. ... n° 20 item solet hic, si mariti, fideiussores ... dotem dederit, et ille iuraverint, manere obligatos, et revalidari fideiussio ..., et religione iuramenti de quo disputat cum multis ... in ... cap. 21 ... Ego vero ... cele- ... quaestiori ... videndi ... ad Donel. lib. 15. cap. 1 ... Obi multos refert, et Olea ... de pactis ... Claus. 12. q. ... n° 17. Domin. ... lib. 8. select. cap. 13 ... Ant. Merenda lib. 6. ... cap. 12 et 13 ... Barb. in l. si cum dotem 23. § transgrediamur ex n° 3 ... solut. matrim. Hering. in hoc tractatu cap. 6. ex n° 146.

§ I. De divisione fideiussionum.

Ubi de fideiussione necess. accurate disputatur.

Definitio quam posui l. cap. n° 1. duas species fideiussionum comprehendit, de quibus et cum voluntarie aut necessarie ... dicuntur, quia diversae circumstantiae ... speciem fideiussoris ... recte docet Hering. in hoc tractatu cap. 4 n° 14. quare divisio haec ut nos loquimur ... generica. Hec membra differunt inter se essentialiter ut equs et homo, ... accidentaliter ut Petrus, et Ioannes. alioquin si essentialiter differrent ... prius esset distinguenda quam divideretur; quia equivoca, teste Arist. ... definiri possunt quam dividantur hec ... ne aliquis ... inversi Arist. ... ex suppositis in principio huius cap. ... circa quam fideiussio versatur ... latissima, cum una ... excepta ... fideiussor ... posit. quare merito ... interpretibus, certa quaedam divisio totam fideiussionum silvam cingere ut ... ex traditis a speculatore ... de diversis cautionibus lib. 4 Roberto Maranta, in speculo ... part 6. memb. 8. Hering. de fideius. cap. 4 a n° 2. ... eodem tractatu l. part. principali cap. 10 nobis vero, ... iuris ... placet distinctio indicata, ... expressa ab Ulp. in l. si fideiussor 7. § 1° ... cap. et a Paul. in l. de die 8. § ... eodem ... fideiussio, alia sit voluntaria, alia necessaria, voluntaria appellatur quae ex conventione, et sponte, a reo principali ... necessaria, quae ex necessitate iuris, vel ex praecepto iudicis ... Roderic. ... de los emplaçamientos ... n° 18 ...

iones in ...

tenetur in l. 2ª qq. a princip. n.º 26 lib. 5 de Appellationib. Pichar. in rub. n.º 26 inst. de satisdationib. an.º 3. dixi ergo, quia ex parte fideiussoris nulla e necessitas fideiubendi cum omnia q. libera sit, et pare debito debere sicut ff. C. de oblig. et action. ut innuit Ant. Fab. in rationali. ad dictam l. 7. §. 1. in hanc divisionem concordant plures et ordinationes iuris interpret. Alvar. Barb. et alii indicati ubi Verm. add. 3. C. de satisd. dando Cautel. V. 2º select. disp. 5. tit. 2. cap. 18. N. observ. Cap. 26. et pollere lib. 14. Pauli ad edictum indicat. de die 8. §. tutor.

Exempla voluntariae fideiussionis praeequi, in tandis ille quam fere impossibile videtur. cum tot possint p. se offerunt c. hendi occasiones, quae ad numerum aut normam reduci non possunt; item plura negotia quae vocabula l. 4. de praescriptis verbis. Cum vero necessariae fideiussionis concordat, sit res indagare, quae possint de dulcedine cum multa labore; magna de utilitate vestra, quia licet arbitrarium sit iudici a parte fideiussores exigere, ob multa quae in iudiciis occurrere solent vero sed Menoch. de arbitrariis, lib. 2. cap. 140 n.º 2. et casu 142 recepit ff. Herming. de fideius. cap. 5. n.º 1. tamen hoc arbitrio debet utilis frenare, p. cum magno iudicio q. si cautio non necess. iniuriam irrogat ei cui iubet praebere fideiussores. l. hac stipulatio 14. §. 1. ut legatorum nomine caveatur. Menoch. dicto casu 140 n.º 1º ubi reum habet omitti cautionibus perpetuam faciet si illam tradat sub quacumque cautione; et eas fragilis cautio ex variis personis exponit Busili 6. ff. q. satisd. tutore l. qui 16. §. item curiae 14. l. qui ita 66. §. 2º ad Trebell. Sunt vero cum eam tradere debet petenti cum idonea fideiussorum cautione, si fideiussores respuit, male iudicat. l. fideiussor 7. §. ult.º q. satisdare cog. Operae pretium est mea declarare, et pro modo si ostendero quam in casibus necess. sit cautio necdum terminiudex decernat, iuris ignorantia ut et nunc ignoletur in hodie inter ipso iure decernunt bene eius peritos et debere aliquam frequenter cespitabunt, aut desipientes, ut censuit prudenter Guiretin. in monitis politicis lib. 2. cap. 9 g. ult. fariamo brebiter ut indicem potius quam ut exercite tractata ut sic quasi uno oculo cito positi casus ita perscurrere et latio res tractata videre ab auctoribus pro me laudatis.

inter necessarias fideiussiones

primus

primum locum obtinet quae a Iustin. inducitur in auth. q[ui]b[us] 6 cap. 2
unde sumitur authentica libellum C. de litis cont.; ut actor
qui in aliquam actionem intendebat satis caveret se intra duos
menses litem contestaturum aut re fasurum; seu imponens ei adversus quae in
litem dictavit. Qui denegauit è alia fideiussio aut deque in authentica generaliter C. de Epis. et cler. quae iubetur n. prius notificandum esse libellum
actoris quam fideiussores p[otes]t periculo actuarij, q[uo]d usq. ad finem litis in
causa permaneret et prae[stare] ab procuratorem suum eam q[ui] exercebit usq.
ad finem litis et si deinde fuerit, malle litigare impensas solueret
et decimam partem quantitatis in libelo comprehensae. hodie tamen
in istrin illu huius modi Cautiones et si valde Utiles reipublice ut
docent Bart. in Colectaneis ad dictam authenticam et generaliter
Maur. Burg. in hoc tractatu 2 part. cap. 12. n° 4 Teuthler. d. 2°
selecl. disp. 5. tes. 3. Vbesem. ad tit. C. de satisdando n° 5. Vu
al. ad Donel. lib. 23 cap. 9. lit. Z. uno tamen casu practicari
debent quando suspitio aliqua oritur de malo iure actoris ut.
è aduena et indiues: tunc enim Iudex ex potentia n aliter litem
dentari permittet quam si actor idoneum habeat de impensis in casu
suncumbentis Maur. Burg. pr[ox]ime e n° 5. alia etiam notat Ifervin
cap. 10 e n° 19.

alia satisdatio iuditialis è quae iudicio sisti
vulgo apellatur: quam iure ciuili p[re]stabat solemniter reus ut
usque ad finem litis perseueraret. l. 2° et p[ro]terea q[ui] satisdare cog.
authentica oferatur. C. de litis test. § 1. hodie inst. de
satis dat. ut si fideiussores idoneos n inueniebat iuratorie
cautioni committebatur. dicto § 1. hodie l. 41 tit. 2. part. 3. quae
cautio erat de sistendo reum in iuditio n de soluendo, 6 sin-
stiterit; verum interior p[re]stabat idem quantum actoris interesset
statum n fusa. tit. 2. § ult. q sat. Har. cog. Placz hoc fide.
uso p[re]statur. ne reus fugeret; q si sufficientia bona im-
mobilia pari debet. n p[re]stabat hanc cautionem. ll. sciendum
15. ff. eodem tit° dicta l. 41 part. hec tamen apud nos ali
quantulum inmutata est; l. 2° l. 2°. tit. 3. lib. 3. fori. qui
sponidet in mobilia, vulgo, no es arraigado, n termi
litis iuratoria cautione. l. in carcere detraditur, donec ido-
neos fideiussores p[re]stet. et cum hoc iure ad exigendam hanc cau-
tionem sufficeret iuramentum actoris se litem malitiose n inten-

dere

dere ut docet Pal. Rub. in l. 66 tauri nº 41: postea ne si iurijs et malitijs ocasio aparireret, cautum fuit dicta l. 66 tauri quae est l. 3. tº 16. lib. 5. Ocpilat. ne prius reus caperetur causa sui incarcerem mitteretur quam ex instrum.º usaleque ex informatione sumaria aliquo modo de decitio Otare. hec informatio dati reo incitato ne aufugiat, Ant. Gom. in dicta l. 66. tauri nº 2. Matient. in dicta l. 3. gg. 2. esse diversae fideiussionis apud nos e dissimilis; ne eiz in verum interveri indaget. q. aliquando ab ipso iudicato difert, ut colligi pt. ex notatis p Farin. tractat de carceribus et carceratis q. 34. nº 6. Maur. Arepinus dicta 1ª part. sect. 2. cap. 1º nº 16. Olealto. infra laudandus lit. S.: apud nos fideiussio hec plenior praestatur, de exibendo reo in iudicio, toties quoties a iudice requisitus fuerit, et iudicatum solvendi sive bene si ve perperam iudex iudicaberit: quae dicitur fiança de la haz Poder. Tuam. tº de los emplaçam.ᵗᵒˢ versiculo ulterius ita exp. nº 3. ubi Valdes lit. A. Greg. in dicta l. 4. gg. 4 Matiencus in dicta l. 3. gg. 1ª fere a principio. et in l. 10 eius deg. tti gg. 1. nº 6. ad q. renuntiant fideiussores benefitio legis Sancimus. 26. C. hoc tº et legis 17. tº 12. part 5. videlicet ne illo uti possint: sg. ultra tempus praefinitum in fideiussione de aliquo sistendo, decedunt semestres indu cie. ut reum requirat illum q. sistat, et subeat defensionem eo; q. si non sistat tunc poena infert, et in amea eius iusti- tutio beneft.º apud nos in fideiussione de la haz. renuntiet. Itaque fideiussor excutitur, si ad praefinitum tempus reum sistat, sigun ga de clausulis lib. 1. cap. 16. cap. nº 5. Verum tamen e si quocumque tempore reus ista ante sententiam, et in dominum habet nihil a toris ... sustit, mora commentaria, et pena fideiussorum relevandis, Gut. 1. parte de iuram. confirmatione cap. 36. nº 10, Azeved. in dicta l. 10 Spillm. S. e aliud etiam beneficium q. huius modi fideiussoribus praestatur in l. penult. C. hoc tº. ut expectant ab obligatione nisi intra duos menses ab actore pulsati sunt de reo sistendo absolvi. p praedictam fideiussionem de la haz. in qua fideiussor obligat reum principaliter sistere sine praefinitis ne tempore, hoc e toties quoties ab actore fuerit requisitus, ut docent nuper citati. quae modi expirat, hec obligatio fideiussoria, et alia ad hanc mag. renuntiat late et iis multi ... ecunt, ultra sup. laudata Donel et O

o qual

... [illegible] ... in nova

... hodie inst. de [illegible] ... iudiciali[b]us

n° 11

Prosequor super

... fideiussiones commentariensi, ... repraesentandi reum in carcerem ... diversimode explicando ... in terminis ... a delicto ... poena capitalis aut corporis a iustitia ... aut ... fideiussorem a iudice accipi ... nec reum a carcere ... Diuus ... de custodia reorum l. 6. ... partit. 7. ... l. ... imponendi ... facit, inter ... quo ... accusatus ... et iteroneam ... statim absolvi ... fideiussores ... 16 ... de ... docent ... tract. de fideiussoribus ... in causa criminali ... ubi multos ... adducit ... Bobad. lib. 3. ... cap. ... n° 80 et 104 ... Marani ... in speculo iudiciorum ... part. ... maxime ... Herini de fidei. cap. 10 et n° 365.

Nisi accusatus de gravi ... sponte se ... iudici ... tunc ... fideiussoriis ... docent Herinc. et Bobad. ... poena sit ... arbitraria ... fideiussione ... ut censet Menoch. de arbitr. casu 323. ... crimen ... dimittendus ... statim ... l. si ... de custod. reorum ... si semel a carcere aufugit. l. nemo de ... episcopali audientia, ... indignus ... custodia ... tract. ... 34 ... autem ... fideiussoribus ... nobiliores et illustres personae ... de custod. reor. et authentica hodie C. eod. tit. docet ... Hering. dicto cap. 10. et n° 366. poena fideiussorum ... ad mille se obligaverint ... fideiussores ... ut dixi superiori n°.

Finitur vero obligatio si reum repraesentaverint ... iudice ... delicti ... coram tabellione fide ... accepit ... carceris ... de carceribus q. 34 n° 93. et 153. Maur. de fideius. ... part. sect. 2. cap. 3. a n° 31. quinimo

si ob nobum delictum aufugerit reus, fideiussor ei tenetur, idem n.º 76. 81 et sequentib. finitur etiam morte naturali rei praesentandi l. si quis 4 ff. [illegible] satisdare cogantur, nec de heredib. fideiussorum tenentur et si crimen morte non extinguatur. farin. dicta q. 34. n.º 34: transactis etiam sex mensib. a die obligationis, fideiussores quoque liberantur, l. sancimus 26. C. de [illegible] nisi expresse huic legi renuntiatur, et fideiussores se obligaverint ad repraesentandum toties quoties ut dixi superiori n.º primo si ob non repraesentatum reum poena commissa sit, et intra annum [illegible] nulla repetatur, anguis fideiussorum iure nostro [illegible] l. 10 tit.º 26. lib. 5. recop. haec fideiussio ordinaria de la hazienda in criminalib. cum qua tabeliones et in nulli iudices impediunt [illegible] fideiussores commentariensem, de carcereria, aut de [illegible] carcere, de qua loquitur Alvar. dicta sect. 2. cap. 6. per totum. Haec in fideiussio durior est quam praecedens, siquidem fideiussor ipse suscipit periculum et custodiam carcerati, quasi esset ipse esset custos carceris, id enim significat vox commentariensis, ut exponunt accurate Panciroli. in notitia imperij orientalis cap. 13. Eleganter Dominus Ramirez de Prado in pente Itato cap. 5. et 7. ubi agit de carceratorum custodib. cum carcerati ad candem catenam vinciuntur. Lipsius ad Tacitum lib. 6. annalium anotatione, 8. Colvius ad Apuleium lib. 7 milesiarum pag. mihi 84. quam ob rem qui sub hoc periculo suscepit custodiam carcerati, et ut solent dici in fideiussione commentariensi para que le tenga en su poder, preso, seguro, y a buen recado si reum non praesentaverit poena corporali tenetur; saltem arbitrio iudicis, ubi dolus aliquis aut culpabilis ommissio arguitur, farin. dicta q. 34 n.º 7. Menoch. de arbitrarijs casu 304. Rod. Suar. dicto [illegible] statuto n.º 27. et ibi Valdes, ut custos carceris tenetur si carceratus aufugerit Bobad. dicto lib. 3. cap. 15. n.º 125. Vero haec fideiussio praestanda quando imminet quidem periculum corporalis castigationis, propter reum propter egritudinem aut iustam causam in carcere detineri non potest. [illegible]

N.º 12.

[illegible] sequitur cum fideiussio necessario [illegible] quod dicitur iudicatum solvi [illegible] cuius [illegible] diversum fuit [illegible], cum hodie iure [illegible] praestabant hae cautiones a [illegible] nomine [illegible] sive in [illegible] principio instit. [illegible] satisdat. Unde [illegible] iuris antiqui regula neminem alienae rei defensorem idoneum esse sine satisdatione l. de die 8 §. si servus qui satisdare cog. 1. [illegible] 46 §. qui alienam iuncta l. [illegible] 35. §. [illegible] defuncti [illegible]

ad defini[illegible]

ad defendendum o judicium, sive tunc vero justini in a ... l. 21 § ... partit. § 9.° ll.
... prior mandato ad litis Dulgo, en el poder para seguir el pleito ... curator ... fideiussionem l. si procurator § ... l. 21 partit. ... hodiernus servat ... hic
mandati ... clausula, que se pone en forma de ... quarto ... anca ... praxis Monterroso tractatu 1. ... del poder general para
pleitos ... domini satis dato ita ... si dominus ... paresciere ... relevo ... alioquin dominus ipse tenetur satis dare, de pagar lo
juzgado y sentenciado ... judicatum solvi ... curator, ... sunt
... mandatum ... fideiussio ... l. 21 partit., ... vinculo ...
... latius hanc ... Ultra laudatos supra n.° 10 Fien.
in ... de satis datione judiciali ... n.° 8. ... ad Donellib. 18
cap. 10 lit. D. et in ... sequentibus ... notata ... Di.° ...
... lib. 4 ... de satis dandi ... n.° 6. ...
... alegat ... n.° 11 ... ad 39. ... refert

n.° 13.

Alia

fideiussio judicialis ... dicitur, de ... hoc interponitur quando petitur ... et ... tertio ... in ... actoris, ... in casu ... actor ... tenetur satis dare ... l. Severus ... et ... si ... in l. si fideiussor 7 § ... satis dare ... dicta sect. 3. cap. 7 et 8.

n.° 14

... nimis frequens jure ... quae hodie ... apud nos frequentior quae dicitur de rato habendo ... procurator ... mandato dubitatur ... 1 § ... l. 2 ... 39. § 1.° l. Pomponius 40 § ... l. 23. de administratione tutorum ... pupillo § ... de procuratore ... nuntiatione l. 3. ... 6 ... l. ... de satis dando § ... instit. de satis dationibus. ... mandatum censetur quando ... aliquo modo ... non sufficienter, ... in scriptura privata, ... et mandatarius ... non ... sufficienti ... instrumentum ... cap. ... Donell. lib. 18 cap. 13. ... lit. X. et ... instit. § ... n.° 10, 72, et 73 alii apud Barb. ... in cap. 1.° de procuratoribus ... n.° 3. ... quando ... persona pro absentibus ... interveniunt l. ... 35 cum sequentibus de procuratoribus Barb. ...

n 2, aur. [illegible] 5 n. 7 quo Aloc caso, hodie forsan in inferioribus tribunalibus hec vativ. to locum habet ut Doct. Hevia in curia philip. 5 part. § 10 n. 30; ordinaria in l. casu dubii mandati expresse sancitur in l. 24 tit. 16 lib. 2 et in l. 55 tit. 1 lib. 3 et in l. 3 tit. 2 lib. 4 Recop. sine sufficienti procuratoris mandato libelli admitti non posse, quod indistincte et ad omnia tribunallia accipiunt ut Febr. ind. l. 3 ex n. 8. Paz in praxi 1 tom. anot. 4 n. 7 et 8 Hevia ubi proxime n. 20 et 30 et ideo quare nunquam nisi judices stantes nec fideiussione in casu insufficientis mandati.

Inexecutibilis n.º 15

Et etiam requiritur necessario satisdatio qua nostratibus dicitur, fianza de la lei de Toledo quam obtenta creditor, executionem petibus obtinuit, ad dictum mi senten. vulgo, *de remate* revocallante de reddenda quantitate cum expensis et altero tanto si pro judice competente additionis sent.ª revocetur l. 2 et 19 tit. 21 lib. 4 Recop. hodie tamen exactio duplici e in usu et tantum quantitas cum expensis reo vincenti restituitur, ut docent de omnibus Vela restantes ut Febr. ind. l. 2 n. 24 verb. addit. Villadiego in polit. Cap. 2 n. 120. Videndi Gut. in l. nemo pot. delegat. 1.º an. 437. Parl. lib. 2 rerum quotidianarum cap. 3 5 part. § 14 Paz in praxi 1 tom. 4 part cap. 3 n. 43. Fich. in manuductione ad praxim 2 part. § 16 n. 7 Hevia in curia Philip. 2 part. § 21 que omnes Doctores docent semper instandam esse hanc fideiussionem, sive Creditor dives sive pauper sive altero petatur sive non petatur, quo obrem judices sententiam additionis ita debent componere, dandose ante todas cosas por el executante la fianza de la lei de Toledo. Accedunt vi et constantia, ultra laudatos Vela[illegible] ubi Febr. dicto 45 n. 26 et 27, Carrasco in [illegible] n. 103 cum persimilia et alia quae dicit, de la lei de Madrid in l. 4 tit. 21 lib. 4 Recop. vigente mandati executioni, apellatione non obstante, sententia arbitrorum, si apareat de compromisso vel publico instrumento sin ?? terminum [illegible] et ?? aliis [illegible] circa lucrationes, habeat ?? dedicione mandantis executioni, sia judice confirmata sine [illegible]. Docent Gut. ubi proxime ex n. 431, Parl. d. cap. tit. § 2, et 7 1 part, Hevia d. 2 part § 3 n. 12, et § 4 proprie, alii adducti a Fich. 2 part. § 5 n. 3 et 6 Carrasco d. cap. 11 cap n. 65. Hec fideiussio ideo praecipitur quod et [illegible] in contractu sententias ita executioni mandari, sine dilatione apellationis, cum quo sine periculo exequerentur, nisi residerent, iterum plenario in judicio. Sic in quantum fiat ?? ?? ?? imperatoris aferentis, cum a sententia [illegible] [illegible] [illegible] explicabat, quare dictum non adhiberetur potenat ille sententiae executioni mandarentur, unquam legitima fideiussione dicto praestanti, ?? illegitimus in eo ?? quamvis fuisset in additione sententia [illegible]

cum

cioz retraxit. q. in aplicando immutatur e, quoniam ante receptio rei ad ditionem cancellarie licet immutari causis et tertijs principibus supra cave in sacramento . . . , et interim suspendit, propter iudicatum; si vero supplicatum fuit fideiussio i donec dicimus de las mill y quinientas doblas . . . que sententia . . . . . . l. 1o tit 19. l. 1o tit 20 lib 4 . . . . Menor decurrend. intra . . . de 2 suplicacione . . . . . . tractatus . . . de la suspension dellas mill y quinientas . . . . prac. . . 38 . . . . in . . . add. . . . . . . suplicatio . . . . . . 4 part . . . 22 . . . . . . fideiussio a iudicibus cancellarie . . . . iudicatum . . . . . . tit 25 . . . . semper recuperet . . . iudicio . . . . 230, et . . . n 291

16

. . . et q. decautione . . . . , admonendi est, si adversus . . . . . . in iure . . . . instrumentum guarentiguz . . . . restitutio . . . . . . gaudeat . . . minorum, si . . . . . . adaictio . . . . . . in iudicio executivo, et de . . . . indulgeatur pro iudice, ... via executiva . . . cognitio . . . . instrumenti . . . . . . et denique ante omnimodam . . . . intersit . . . . . . Carleval de iudiciis 2. tit lib. 1o tit 3 disp. 10 . . . 27 . . . in fine, Larrea 2 tom. in recopilatione tractatu de apellatione . . . de remate no 19 . . . . no 2. . . . restitutio petitur traduxerit iudicia calumniose impl[illegible] . . . . via executiva, inaudita cognitione restitutio . . . . Barb. no 7. . . . lebat . . . no 40: . . . tamen, donec fideiussio, ab executione desistendo, ... Barb. no 5, Maur. . . . 3 part, q. S. . . . 14; hec tamen apud nos, nec in usu, immo . . . . debitori . . . fidejussione . . . . . .

17

Alia fideiussio necessaria . . . in initio viae executivae, que apud nos dicitur desancamiento, ... mandatum executorium l. 19 tit 21 lib 4 . . . . . . fideiussores promittunt bona debito . . . . . . sufficientia esse . . . . creditori . . . . fecerint

solvendo

vel multos multa q congerunt;

130

Deseriaz. qui itatenent ut propetuo

et fecte q. domini n. sint adinstar fidei commissarij te nenentsatisdare. Veluti usufructuarius l. 1° C. de usufruct. l. 1. et si cui § vestimentorum ff. eod. t. 3 l. de Die 8. § tutor 4 ff. q satisdare cog. l. 1° et pto totu ff. usufructuarius quemadmodu caveat l. Fure deceris, et in pot. leg. de qua cautione agunt Herin. l. q. S. c. p. n° 196 Maur. Ubi p. C. 19 alias 28. multa ex pradoctual. ad Donell. lib. 10 q. 4 lit. E. Aug. Bar. ubi ibi in q. ult. Arig. et Rich. princ. inst. de vi. fruct. n° 7 et 12 sic q edificat in solo q. alienu ee obtenditi ex hibente nuntiante q novum opus, si videtur origo tuo q a iteris de demoliendo opere cu de malo iure Viterit, ee fu viz prop potent l. 1° C. de novi operis nuntiatione l. n. solez § sciendu l. Pretor ait § deinde et § sig. pariter, l. de pupillo § si ijs cui ff. eod. l. 9 t. 3 partit. 3. Rich. in § in summa inst. de interdictis n° 307 Valenzan lib. 2 illust. tractatu 1° C. ult. n° 6 et 7, et qui q ripas fluminis munit tenet de damno futuro cavere, dominis adiacentiu proximis l. 1 § qui aute de rip. muniend. l. 1 § stipulatio ex q. stipul. Maur. Ubi sup. C. 32 alias 42 Her. d. C. 5 n° 310, q est pracaus cautionis de damno infecto, qua vicino pstare tenet, dominus aediu q minantes ruina, de qua agit in ti. de damn. inf. qq. adnectipt alia cautio, qua necesse est tat civi cu litigat litis expensae decernunt a iudice; de restituenda summa accepta si ostiterit malo iure litigase Cuabrr. in practicis C. 6 n° 5 Fontanell. de pactis nuptialib. Claus. 4 gta 18, 4 part. n° 88 Hering. hoc tract. C. 10 ex n° 131 ubi distincte agit quando hec Cautio p. pecunia tae remittenda sit.

n° 131

necessario

etia Cavent q publica et civilia officia administrant; veluti videt quintanj ff. cuius rei 68 hoc tt°, l. 6. t° 4 part. 3. novella 129 C. 1; q a viciniores omni o lauliter observat quotidie correctores civitatis intra menses. a Die assigna pericoli tenent sindico civitatis fidiussore de residentia dare, l. 13 t° 5 lib. 7 spill. § 23 t° 7 eod. lib. Acuend. de exequendis 1 part. C. 2 n° 15 Paris oraxi, 1 tom. 8 part. C. ult. n° 3. Bob. in politica lib. 1 C. 15, n° 47 et lib. 3 C. 7 n° 23, et lib. 5 C. 1 ex n° 84, Vohuer. reg. 16 n° 20, item tutores et curatores, tenent satisdare, re pupilli et adolescentis salva fore, alioquin tutela inutiliter illis committi l. si tutor C. in qq. casis in integrum rest. non est necess. l. nodubiu C. de tutore q satis dare n. dedit totu t° q re pupilli sivam for. et inst. de satisdat. tutoru, l. 9 t° 16 partit 6. et quamvis olim ascriptores et inquisitiori n. satisdarent, ut princ. inst. hodie annumerem

...tati

dagine requirent, si succederet in executione, et eis tradenda d[?]ata [illegible]
... [illegible] ... Hec omnia
multis [illegible] Maur. Ubi proxime sto videndus.

Huic proxime alia
fideiussio ... in executionis [illegible] ... debere et ... hoc
... partis ... partis ... mandans [illegible]
... l. 21 de reb. cred. ... liber
§ de statuliberis ... de ... [illegible] ... de distract.
pignorum ... Carol. de iud. 2. tomo. ... 15 ... [illegible]
... 14 partit. § ... 3. Ant. Gom. 2 tom. Variar. Cap. 10 n. 3 ...
in appendice ... de ... iud. n. 82 Valen. ... Cap. 4 ex n.
35. Sic ... debitor ... petat, ... pars ... liquida
pars vero illiquida ... offerat, ... liquida ... sit ...
... executorio ... [illegible]
... et auctoribus ... allegatis, et in ... docent Her. de ... Cap. 15
ex n. 6. 3. Maur. ... tract. 1 part. sect. 3. Cap. 5. ... 15, et 2
part. sect. 4 n. 24

Praestare etiam in executionis ... aliquando alia
cautio ... quaelibet ... [illegible]
... creditoribus ... executio ... petita sit ...
... maiori parte ... si maior pars creditorum ... consenserit.
arg. ... Iurisgentium 7. § ... maior ... 1 ... 5 ...
15 partit. 5. ... Dominus ... Cap. 30 ex n. 53.
... Rich. in ... Ult. ... n. 19. ... in forma ...
... n. 27 et seqq. ... in curia phil.
... 2. part. § 24 n. 2) induciis ... impetraverit:
... aliter ... fideiussores ... creditoribus
... 7 ... 19 ... § novissime ... in casu ...
non sufficit, quamvis fideiussores ... forma
requisita ... l. 4. Qui ... vero ... quan-
... impetrent inducias ... bona dilapidasse ...
... bona in fraudem creditorum, ... teneri ...
... quaestio ... modo ... dicitur ...
... dilapidatione ... tempore post inducias, ut ...
Rod. ... Gratian. ... Vallad. ... Cap. 12 n. 166 ...
... creditoribus ... Principe ... moratoria, ... aliter ...
... creditoribus, quasi ... fideiussoribus cavere ...

solvendo creditori, indemnitatem promittant, ?? pro addictione facta. Vulgo depositos de saneamiento et remate. Regressus adversus fideiussores datus, si debitoris bonis debitoris non inveniantur idonea, ? si reus pro dicto fideiussore non dederit tempore suo fit executio pro Carceris, manipationem, nisi sit expulsus, ... debitor ... cibili Carcerari non possunt, d. l. 19. quo latius tractant ... indichonario ... almoneda Guzman de evictionibus q. 34 et 47 Baeza de inope debitore c. 1 n. 27, Hermosill. in addict. ... ad leg. 1. ... l. 32 tit. 5 part. 5 glos. 1 n. 23, Parl. d. lib. 1. tit. 5 part. § 5, Pich. in § ... n. 14 institutionum de actionibus ... in manud. 2 part. § 8 Carleb. 2 ... de Judicijs ... tit. 3 disp. 2 n. 27

n. 18 Huic adiungo, alia fideiussio de saneamiento quam creditor ... pecunia ... numerata non habet unde solvat et dat bona sua ... editori, ... et cum pro qua fideiussores promittunt etiam bona propria debitoris, ... si fideiussores in tenire non possit, dat pignora in eandem evictionis causam, ... pignoribus ... iuratoria Cautioni ... auctenticam hoc nisi debitor ... solut. l. 3. tit. 14 part. 5. quando vero et quomodo in casibus ... niendum sit ad dictam auctenticam ... disputant Carl. d. lib. 1 n. 13 Pich. d. 1 part. § 7 n. 27, Rodrig. de annuis redditibus lib. 1 q. 18 n. 42, 49 et seqq. Parl. d. 5 part. § 17 ex n. 22

n. 19 ... Castillo ... politica ... n. 140, et in forma ... Locpleuthus n. 23 Hering ... n. 470. Mant. ... cod. tractatu d. 3 part. ... 7 a ... 16.

Alia recenset idem Mant. ubi ... l. 13. alias 22, quando executio iubetur fieri ... tradendam, et reus excipit ... nit. de expensis et ... ratione ... sibi reficiendis, priusquam ad rei traditionem proveniatur ... intenditur. Super opposita exceptione est audiendus, ... pugnet sententiam ... nobis articulis introducat, ... executionem ... et disceptari argum. ex l. ... fidei commiss. 6 tit. de ... et quo tempore ... retentionis ... Caius ... de pignoribus l. 2 C. de fidei commiss. et quod si liquide sint meliorationes, executio audiri et nisi actor ... tollere ... (si tales ... tolli possunt) ... in executione ... ... Castillo, quia ... liquidari ... in

Ravins

n° 24

[illegible]

Hunc apicus similis v. e. aliaque deducit ex l. iis aquo 57. de vi. iuind. sicut de persone [illegible] alter candem pecjunit q. [illegible] cilii [illegible] iussu maneat [illegible]. [illegible] iudici de eo [illegible] 3. §. lis senbit. [illegible] à aliis [illegible] tradere tenetur [illegible] [illegible] indemnij [illegible] securum [illegible] usque paxo [illegible] [illegible] 57 de hereditatis [illegible] notar [illegible] 3 part. [illegible] hanc [illegible] in forma [illegible] ut [illegible] expositurip [illegible] [illegible] Sala [illegible] [illegible] 3. [illegible] [illegible] indemnit. [illegible] [illegible] 3. [illegible]

n° 25.

Que ab ollag iudicialis fideiussionis tractationes subst. accensere cautione dem vendendo qua exigere ot [illegible] documentis [illegible] q. ab aliomet [illegible] obligmore [illegible] iusti timoris causa sive iure quo timet homo furibundus, et iracundus, et minas exequi pt: quia est boni iudicis off. potentiores [illegible] et [illegible] humilioribus [illegible] [illegible] tentiores [illegible] denuntiamus [illegible] nec cau tio [illegible] et ideo nisi causa cognita timoris iudex debet procedere [illegible] bet de qua magis [illegible] agunt [illegible] in hoc tract. Co. 6. n° 247. Mauer. in [illegible] dis [illegible] sect. 2. [illegible] 4. [illegible] tom. [illegible] Vili. dicq. in form libellandi n° 216. huic adiungere [illegible] aliam cautione qua [illegible] creditore de securitate [illegible] et bona tractatione exigi id est [illegible] ad invicem [illegible] familiaris [illegible] [illegible] nec fideiussio dari mulieri [illegible] a [illegible] filijs, fratrib. et ceteris [illegible] ut notat Fleving d. co. 6. [illegible] 255, et notanda est diff. inter [illegible] carceri mancipare pro debito civili et inter [illegible] creditori: illum [illegible] novem dies [illegible] creditor tenet. 1. [illegible] 16. [illegible] 5. [illegible] nisi in casu extreme indigentie [illegible] 261 [illegible] hanc vero semper quando [illegible] [illegible] bis [illegible] maritus [illegible] [illegible] et mala [illegible] ratione [illegible] ad domum reducere intendat [illegible] matrimonij [illegible] ne separari [illegible] in [illegible] Carb. n° 5. et 8 [illegible] ex n° 2 [illegible] additiob. [illegible] spoliatorum [illegible] Co. 6. n° 237, Mauer. [illegible] Cui cautioni locus non est quando [illegible] et sine probabili timore [illegible] damni, [illegible] ut docent

[illegible]

no engra notamus (Cap. 3 n° 18. denique chorronide admonendi estis quasi lex et iudex forma ad aliqua actu fideiussio epigunt quia dandae est nec iuratoria cautio sufficere erit obpauper: tatis vel obbaliq. Taes fideiussores inveniret n. = rotinet, q. doctissime fundat Dominus.

finis dedi huic = Salus. inlabor. Cred. i part. = Capiti XII Kal. februari hora 4 = expno; cum multos sequentes = vespera anno 1654. auctore = sit Deus cum matre sua = D. D. D. Joseph. ferdinand Dez. de Rueles in = benedictus absque labe per = Salmanticensi Universitate. sit ad gloria = Beati originali = et honore Domini mi ... et Virginis Mariae = Concepta = matris eius qui mihi parcant ...

= finis Capitis = Secundi =

D. Garcia. Ant. Villa Lobos

DE SIMPLICI FIDEIUSSORE. DE FIDEIUSSORE INDEMNITATIS DE BENEF. EXCUSSIONIS

2 Divisio Fideiussionis. Cap. 3.

n° 1°

Potest alia divisio fideiussionis sumi ... diculis: alii enim fideiussores citius quam alii ... ... fideiussio simili ... priori qui nullum membrum continet diversum ... ideo ... dicari ... ut tractatu invenimus; ... fideiussio indemnitatis Vallejo de sacar a ... ut docet Domin. ... in l. 1 C. de decuri. ... n° 7, ... petites huius fideiussionis est tali quanto minus a Titio ... fidem mea est iubeo ... omisis 17. l. ... 52, C. et ... hoc ... est gemma notandum in l. ... de novationibus, ... huius fideiussionis ... oriuus conveniri ... fideiussor quam excussione facta ... tenere ... solvendo ... dicuntur, solvendo ... fideiussores ... tutorium tutores l. 1 C. de Magistratibus conveniendis l. 1 C. de conveniendis ... l. 10, ... in l. tutor 19, § ... ergo 4 ff. ad S. ... Grandes ... fideiussores 11, l. ... 47. ... 50 ... Docent, Clarici, in l. ... 116. de ... ...

...

hoc tractatu Cap. 6. ex n.° 184. Disimilis ratione, qua p. hac maritus ser[...]
lato matrim.° si inter dictio Legale admitendo dotis fide in ter-
mina annua p.statione qua habebat iure Veri Dn. in fragmenti
h.° de dotib. § 8. & annuum ex iure novo l. Vnic. § Exactio C. de
rei Vxoriæ actione) ad quam portare vocat l. si Constante 24. § quoties 2
solut. mat.; & si satisdare n. posit stati Dos heredib. Vxoris re
p.sentari & sequestrari, deducto tamen commodo ivi Vxori, idest fruci
ad maritum medio tempore ex fructib. percipere potuit. Hering. Ubi
prim. ex n.° 186. Pet. Barb. in l. in omnib. ⁊ de additis n.° 10. Salg. in
Lab. i. part. Cap. Ult. n.° 154, quamvis contraria omnium sententiæ Mauv. Ubi
supra.

n.° 28

Trahitur etiam superior Cautio, ad patrem qui ad venditio filij administrat tan-
quam usufructuarius & legitimus admi.s tratur; qui si inceperit admin. stra-
tione male versari & privati administratione l. Imperator. So. Fradsen.
C. Sub. Gabullgant. Fragmati com. Anse: Decidatione tenetur se-
cundum filio p.stare decenc. Maur. Ubi supra Cap. 3. alias 17 Cap. 88 alias
48 Barb. in l. si Constante 25 n.° 14 & 15 ff. solut. mat. Mol. de his
panorum primog. lib. 1.° Cap. 12 n.° 15 Pinel. in l. 1.° C. de Bon. mater. 2.
part. n.° 35.

n.° 29

Aliquando et si ponitur dilapidationis ovis p.pter sola dilationis de-
uitor Cauere p. securitate tenetur, q. in Ultimis Voluntatib. predit p.pter peculia-
rem earum favorem. Ideo legatis Conditionalib., dum pendet conditio heres tenetur
idoneis legatarijs Cauere totoll.° ut leg. nom. cau. & legatarius qui forte plus ca-
pit quam p. l. falcid. licet, Cavet p. omni heredi ut intelligi si fuit plus
quam p. l. falc. et q. legatum accepit sub aliquo modo idest ut aliquid faceret
licet statim legatum representet, q. modus n. differt p.statione l. Meuia 54
de condict. et dem. tamen satisdat de implendo modo. l. quidieb 40 § 5 et
milius de condict. et dem. sic si tres ceualliquo relictus e sub conditione
in n. faciendo nupta velati si in Capitolium n. ascenderit, q. n. potest aliuns
legatum capere ob n. impleta conditione, inventum fuit remedium a Quinto
Mutio Scevola, ad hoc ut statim caperet, sit data idonea Cautione de con-
ditione implenda aut restituendo legato l. mutiane 7. de condic. et dem.
docent multis laudatis Hering. de fid. Cap. 5 ex n.° 299 et Cap. 10 ex n.°
304 Maur. d. 3. part Cap. 21 Cas. ribij reggli Barb. in d. l. in omnib. ex n.°
15 exp. Ludovicus Mol. lib. 1 de prim. de primogen. Cap. 15 n. totis, so
lide fundat, maioratus posesores deneri successori de securitate Cavere
quatenus tum fideicomisarius quenit q. alij tenentur eadem bona restituere

tis actione creditoribus elapso tempore induciarum l. universa 4 C. de precib. Imperatori offeren. l. 83 n.° 18 part. 3. nisi iure se fideiussorem inuenire n. posse, quo casu liberatoria [illegible] hypoth[illegible]
[illegible] tener[illegible] 3.
[illegible] n.° 15 [illegible] Valenzuel. [illegible] Iuliadies [illegible]
[illegible] relati 306. lb 3 [illegible] 13 n.° 20 Domin. Sa[illegible] d. 2 par.
[illegible] 30 [illegible] 52 Herina. d. 05 [illegible] n.° 232 [illegible]
d. 3. part [illegible]

n.° 22

[illegible] tamen [illegible] dimi[illegible] sub [illegible] n.° 15. lb. 5 [illegible] in [illegible] positum
[illegible] haberi debet de [illegible] creditoris [illegible] ciorum [illegible]
[illegible] Et hoc [illegible] esse [illegible] pragmaticum [illegible]
[illegible] Carbo [illegible] n.° 25 [illegible] fideiussorum [illegible] 150
[illegible] iuraverint se fideiussores inuenire n. posse, ut accedit [illegible]
[illegible] n.° 39. [illegible] certe [illegible] et [illegible]
[illegible] Et [illegible] fideiussores [illegible]
[illegible] quare [illegible] fideiussorum n. habere [illegible]

n.° 23

[illegible] Boni [illegible] occurrentes ad [illegible]
[illegible] accipiunt gradum [illegible] in
[illegible] comparant [illegible]
[illegible] ostendere, [illegible] actione intendere ad
[illegible] Vero [illegible] provocanti [illegible]
an [illegible] ideo [illegible]
[illegible] debet [illegible] mandatum solutionis [illegible] mandam
[illegible] iubere [illegible] weigde
[illegible] ordinariis
[illegible] detributoria, [illegible] et [illegible]
[illegible] omnino [illegible]
[illegible] tom. de iud. lib. 1 [illegible] 22 n.° 12 [illegible] 23 n.° 5 [illegible] Jager. [illegible]
35 n.° 23. Salg. in labirintho Cred. 1. part [illegible] 5 [illegible] 3 max
[illegible] n.° 48 Romane [illegible] decis. [illegible] 1. tom. [illegible] 5 [illegible]
8 part 6. n.° 33. et [illegible]

n.° 24

Dari a iudice satisdare tenentur, et n. e. in vsu, ingistis debet in mores, et uitate tutoris, Lution. de tutell. 1 part. q. 12 n. 26. gnumo et testam. tutores dari satisdare ...

Pich. tract. crimin. n. 3. de adm. satis dos. et de stricto magistratus, notariorum § q ea ... videndus servin. d. q. 5 expi 214. Alvar. d. 3. part. ... Baeza de decima tutoris q. 7. expi 72. Spino, in specu. testamentorum glos. 9. expi 33, Bobad. lib. 3. c. 14 n. 52, et lib. 5. c. 3. n. 140. Tenentur etiam satisdare administratores rerum publicarum, vulgo los maiordomos delos propios y alhondigas l. 2. C. de admin. rer. publicarum lib. 11. l. curatores § ... de admin. rer. ad ciuit. ... item conductores agrorum publicorum l. 2 C. de pr... decurion. lib. 10, l. 3. l. 9191 C. de o... agro deserto lib. 11. l. 9 fideiussor § 3. ff. locati. item publicani, id est los arendadores de aduanas, rentas reales l. locatio q. fi. ... l. intendis § ... de publicanis et vectigalib. l. fideiussores 6 § 1 ... l. 2 § penult. de admin. rer. ad ciui. ... ... et multis regni legib. quas in pub... colligit Gut. ... Loguer aleg. 21 ... Sal. in labir. cred. 1 part. q. 9 expi 76.

Tutores addunt aliqui necessarie fideiussioni, qualis est qua tenetur praestare ... impuberis de restituendo bona illius ... iure ... impubes moriatur ... decedat, § ... de ... C. l. aliter 28 ff. eod. l. causa cognita 40, de vulgari, cum aliis quos congerunt et exponunt ... d. q. 5. expi 166. Alvar. ... q. 33. alias 43. ... in ... 105. in ad notam ... Vulgari. ... lib. 7. ... Pich. inst. ... n. 8 de adop. item pater emancipatus cum ... in familia relicto ... succedere, satisdare debet de bonis ... q. fermd. l. 1 § iubet q. de col. bon. Pet. ... lib. 4 ... cap. 8 n. 7. Ant. Gom. inst. l. 2 q ... n. 37. Pich. de col. bon. ... 4 in § ... inst. de act. nouissime Arnold. Vinnius in eod. tractatu q. 16 n. 7. et 8, item Usurarius manifestus ut possit ecclesiastica sepultura ... tenetur satisdare ... gravitate ... Alba... q. quanquam, de Usuris in 6. ... Barb. expi 2. illud circa fideiussiones necessarias iure ... ex precepto iudicis praestantur, observandum est, non esse ampliandas ultra formam ... ... nec in ... ... actiendum esse fideiussorem ... et ... § item quaeritur ... ... lib. 2. ... notant ... de excussione non renuntianda Parl. lib. 2. rerum quotidian. c. ... 7 n. 8 Loguer aleg. 15 n. 13. Siguen... de ... lib. 1 c. ... n. 78 et

idem standam rem pariter debeant l. eandem § cum ita, quod sequitur Paul. in nota Papin. add. l. decis. 116. ibi non est duo rei Maevius et Titius eiusdem obligationis cum quo 2us nec sit fideiussor, neque Correus debendi cum 1o, sed debitor incipit haberi sub conditione si ille solvendo non sit, ut ante in eum casum accessum, deinde non est ut Creus secundae obligationis sit in meritis ... ime, quod in eum casum voluit secundus in se suscipere alienam obligationem tanquam reus principalis ab eo diversus; quod cum fit dicitur expromissio quae veterem obligationem novat l. et eleganter 7 § servius 8 de Dolo l. a te conditione cum placita l. q. libertinus 37 in fin. de operis libertorum, quod acute indicavit Castrensis ind. l. ult. n. 2. quem imme-
3
rito reprehendit Anetab. in tract.

Ab auct. idem probari ex d. l. ult. de reb. cred. l. ibi ... discurso Titio cum Seio 2o reo incipiam agere, quantum a 2o petiero, tantum a 1o iterum petere non potero. quod post petitionem et litis cum 2o contestationem 1us liberatur. Quia oblig. solvitur, sed est novatio subtiliter replicetur certe desideratur cum 2o litis contestatio, siquidem contestatione ipsa est quae veterem obligationem novat, quod donec ... Ideo quaeri non potuit, dicam, ideo putari ut creditor cum 2o agat, quod antequam eum in iudicio pulsaret non est certum, quantum a 1o consequi non posset, si quidem quam in expensione obtinuisset, nihil 1us solvere posset; eveniet forte ut creditorem tentum redat pro parte quam in solidum, pacto innita ... inducijs ... dati novus reus. quod si deinde 1o in meritis non solvendo nihilominus creditor a 2o ex eo promissum tantum petierit, quod pro illa tantum parte, impleta fuit conditio Obligationis 2i rei, pro illa tantum fit novatio et hanc habebit expromissio; quod cum tantum maneat a 1o debitore reliquum, consequens est ut creditor dici non possit solidum a 1o reo, consequi non potuisse. Itaque cum novatio tantum fiat pro parte petita. Consequens est, ut adversus 1um reum iterum creditor agere possit pro parte quam a 2o non petijt, et hoc modo omnis auctoritatum nostrarum ex plicanda est illa verba d. l. ult. Post cum Seio egero quantum ... quo minus a Titio exigere potero, eo tempore, quo iudicium inter me et Seium acceptum est, tanto minus a Titio postea petere possum. Ex quo liquet ... petitionem creditorum non esse ... facientem per se novationem, sed demonstrativam quod pro illa cum exsecutione iudiciali certum redditur, quod creditor a 1o debitore consequi non potuisse.

De ... Quadetti ... decis. 21, de solutionibus,

Ubi Paul. ait ... a Seio stipulamur quanto minus a Titio consequi ... et cum Titio egeris, ex sola postulatione, Titio ... iudicio ...

Cx. ...

Hering. de fidei. c. 4. n° 11. et c. 27 1 part. ex n° 142, Maur. 1 part. dl. q. 17. et 6 part. q. 3. ex n° 197. Otua. ad Donell. lib. 15 c. 48 lit. I. et sequenti. Carl. lib. 2. rer. Cotid. c. ult. 4 part. § 7 n° 10, Primai ad Ubigg. ex n° 6. Noguer. alleg. 40 n° 41 et 42, 59 et 60 Salg. in labir. Cred. 1 part. c. 28 n° 83, et 3 part. c. 11 ex n° 5 ... = Quae fideiussione

n° 2

non est temere confundenda cum promissione illa quanto minus a Titio exegi poteris tantum ego tibi promitto; de qua fit mentio in l. ult. ff. de reb. cred. l. Decem 116 de V. O. ff. l. Decem 21 de solutionib. haec etenim nec est, nec habet speciem fideiussionis, non est fideiussio quia non debet quia ita promisit, quandiu Titius solvere potest et sic eius obligatio, omnesque obligationem non accedit. Deinde quia ubi facta excussione in bonis Titij, secundus reus conveniri potest, liberatur primus d. l. ult. de reb. cred. ut tradit acriter Donell. ibi n° 14 et 15 licet verum sensum non cepisset; et ideo numquam utriusque obligatio concurrit, quia antequam discutiatur 1us nondum incepit obligatio 2i; et postquam ad 2um venitur, statim liberatur primus; 2us vero non liberatur donec solvat, ut probatur in l. solutum 11 § non solum de pignor. act. Cum interim in obligatione maneat et non sit alicui qui accedat, fideiussor dici non potest, ut ratiocinatur Papin. in l. fideiussor 19 de dolo. Non etiam habet speciem, aut formam fideiussionis; quia nec necesse erat illa formula verborum in fideiussione fide mea esse iubeo ut dixi c. 1° n° 1° quae signanter utitur Ulpian. in l. si ita C. ff. de novat. ad exprimendam fideiussionem indemnitatis, quae cum promissio non concipiatur in potestate solius illa formula non potest dici speciem fideiussionis continere. Erit itaque contractus de quo in d. l. Decem 116 de V. O. promissio duorum reorum non simul promittentium ut correi, sed successive unius post alium ita ut secundus non teneatur quandiu primus solvere potest; quia sub illa conditione promisit, si primus solvendo non sit. quare non prius incipit secundus obligari, quam desierit primus desijsse esse solvendo: et cum ita sit statim oritur obligatio secundi; itaque ut existens novet obligationem primi. Hic fuit sensus Ioannis [illegible] glossatorum non sic exposita ut exposita, quam male intellectam reiecerunt desertione accursiani, et postea Donell. et alij hoc in d. l. ult. n° 13. mihi autem persuadet ab auctoritate et a iuris maiorum fundamento. ut quia a se incipiant, statim in primus secundus reus non esse fideiussorem ut nuper dicebam. statim etiam non esse simul cum 1° correum secundi: quia debet quanto minus a Titio servari posit incertum debet l. ubi autem 75 § quoties de V. O. 1us vero reus debet certum quia promisit non potest autem duos correos constitui, nisi ambo

fi

183

[illegible]

n° 26

naves, audaci et [illegible] fero loco plurimis rumoreis Barb. in boni dec. [illegible] lib. 1 Voto 9

Alie [illegible] quae a iudice decernuntur sine ulla lite seu [illegible] [illegible] merito [illegible] decretales talis est Cautio quam [illegible] de fuga [illegible] debet creditori petenti sine iure crediti, et suspitione fugae sumarie [illegible] creditores [illegible] [illegible] pena [illegible] [illegible] [illegible] ut creditores [illegible] bona [illegible] [illegible] § 9 [illegible] [illegible] nisi [illegible] [illegible] de qua dixi n° 10 in [illegible] eruditus ut [illegible] addendi [illegible] lib. 18. observ. [illegible] 30 Sap. [illegible] de iurisd. lib. 1 [illegible] [illegible] [illegible] indecitore de fuga [illegible] quo quando [illegible] debet [illegible] [illegible] patrimonium dissipare [illegible] ad inopiam [illegible] quacumque [illegible] [illegible] 4 [illegible] [illegible] in bonae fidei iudiciis et ideo [illegible] aliud omnino dicendum erat in actionibus [illegible] quales [illegible] et stipulationis [illegible] multe, ut [illegible] [illegible] [illegible] ind. [illegible] 41. [illegible] 5. [illegible] n° 50 Rich. [illegible] [illegible] 28 § 13. [illegible] de actionibus [illegible] hodie, si [illegible] ex equitate [illegible] stricta, a bonae fidei iudiciis [illegible] S. de iud. merito [illegible] [illegible] placuit idem pariter in [illegible] dicendum esse ut [illegible] [illegible] principio [illegible] de [illegible] n° 1 [illegible] § 1° [illegible] de [illegible] n° 168. Docens [illegible] Rod. Suar. alleg. 4 n° 3 [illegible] in [illegible] 3. tom. [illegible] 7. n° 8. Vill. [illegible] form. [illegible] n° 113, et 135 [illegible] in l. 2 in [illegible] 2. part. n° 27 ff. solut. mat. Salg. in lab. [illegible] n° 1 et 32. Maur. de [illegible] 3 [illegible] [illegible] 10, [illegible] 70, aliis 29. [illegible] idem omnino [illegible] [illegible] debitoribus, [illegible] ad [illegible] habent [illegible] [illegible], exemplisque multis, explicat.

n° 27

Valde similis est huic alia [illegible] [illegible] maritus [illegible] dote Uxoris sue restituenda [illegible] [illegible] [illegible] [illegible] et bona [illegible] male administratione l. si [illegible] 24 ff. solut. mat. l. ubi adhuc 29. C. de iur. dot. novella 97 de equalitate dotis § illud l. 1° 4° 9. l. 8. 4° 29 partit. 3. l. 29. 4° 11 partit. 4. [illegible] idonea cautione Uxori [illegible] [illegible] [illegible] [illegible] dote [illegible] matrimonii onera [illegible], [illegible] [illegible] [illegible] negotiatori traddit, maxime si in pecunia numerata [illegible] lucro, salvo Capitali, [illegible] matrimonii [illegible] [illegible] Non. [illegible] Vir. [illegible] [illegible] de quo [illegible] [illegible] [illegible] manu a Barb. in d. [illegible] et in d. l. ubi adhuc [illegible] in form. lib. n° 132 Mort. in empor. 4° 129. [illegible] n° 7, [illegible]

[illegible]

Ex sola Inventione Sui non liberari; et immo potius necesse est ut cum Titio experiatur, et Stet eum non absoluendo ut ad Seium transitus dari possit ex quo sequenter Doceo, si primus iudicialiter excutiat Titium, et Seio offeris, nihil Ipso agere et ante excussiltum, n admodeo Dicto cum qua Seius debet l. Dec. 116. De V.O. unde Pladit coincasu, et Titium in nulla parte liberari, et praeterea cessat petitio... Titium, cum Seio Egeris tacite fateris Paul. Titium liberari, et nouationem ex sola Inventione Diriget, siue ut rectius loquar, ex ortu secundae obli-gationis

Ego Diuerso idem Paul. in l. sit a Titio inorine. Renouat. Docet non adnouationem sit a Titio fit, quam nimis a Titio Debitore exegerint ...

[illegible]

Mal. ... Doleon ... Comprobare lectionem ... et eligionem ... Dari ... Agnosces

G

nitatis conveniri non potest nisi postea quam is obligatus fuerit quoniam usque nunc electio liberum actori relinquitur dato tempore conveniendi et in hoc casu, de quo agit Dyptiens [illegible] electionis [illegible] [illegible] voluit tractari. [illegible] Iustinianus instituit beneficium quod accidit in novationibus, et quod continebat [illegible] [illegible]. [illegible] ut inde l. [illegible] [illegible]. [illegible] iure novo [illegible] non derogat [illegible] nostra institutio. Ex quo etiam infertur nec novo nec veteri iure [illegible] reum principalem liberatum fuisse electione fideiussoris indemnitatis, nec [illegible] in hunc casum [illegible] novam illam Iustiniani constitutionem quae in hoc [illegible] fideiussore non potuit habere, [illegible] [illegible] electionis. Infertur etiam ex notatis, [illegible] adhuc post conventum et dimissum reum principalem, licet fideiussor indemnitatis conveniatur, maneat etiam obligatus reus principalis, proprie fideiussionis est fideiussio indemnitatis, quae accedit principali obligationi, quae durat quamdiu fideiussor eam non dissolverit etiam effectu [illegible] solutionis vel alium legitimum modum, ut constet quod dixi sup. n. 1. Nam fideiussio indemnitatis non est dissimilis a natura simplicis fideiussionis nisi [illegible] [illegible] quatenus differt fideiussio conditionalis a fideiussione pura.

Cognita fideiussione indemnitatis restat admonere quod in casibus [illegible] in iure talis fideiussio, ut exposita quod [illegible] sup. [illegible] 2 n° 24 de voluntariis [illegible], quod [illegible] casus [illegible] quot occurrere possunt contrahentium voluntati [illegible] [illegible] sinater indemnitatem promiserit. De necessariis autem, ut uno verbo diffiniam, semper Iudex indemnitatem parti repromitti et hanc fideiussionem iubebit quoties perspexerit aut timere prudenter poterit ex suo decreto aut alia quacumque ratione damnum alteri accidere posse, quod mihi probant [illegible] in l. 2 C. de sententiis quae sine certa quantitate proferuntur l. [illegible] 31 §. 1 de negotiis gestis. Ulterius si [illegible] [illegible] quod [illegible] dicta [illegible] sua petat, doceatque summarie [illegible] in [illegible] in [illegible] [illegible] sine [illegible] parti citatione sua esse, res illi tradi iubetur; [illegible] indemnitatis accepta de re alteri restituenda si [illegible] careat de meliori iure docens [illegible] quo semper in hac re [illegible] in l. [illegible] 52 §. si fugitivum 12 de furtis, item si unus ex [illegible] vendiderit, et alter totum aut proportionalem partem [illegible] petierit, illa illi iudex dari iubebit, si ei qui vendidit de securitate et indemnitate caveat, ne forte postea emptor adversus venditorem agat de evictione, pro qua securus ab illo iudicio remanet [illegible] parte a [illegible] quae [illegible] [illegible] parte securum reddere debet venditorem ab evictione [illegible] l. si unus. 67. ff. pro socio. Et fideiussionem [illegible] ab uno [illegible]

solij: indiq; [illegible] [illegible] et [illegible] societas ante. [illegible] solij
ns non obligatur, de indemnitate ab eis cavere debebit, l. Omne 27 [illegible]
in sequenti ff. [illegible] quia [illegible] ad [illegible] iudicis spectat l. [illegible] 15
[illegible] 3 8 ff. eod. [illegible] si soluto matrimonio pendentibus fructibus [illegible]
dotalis, [illegible] dies [illegible] [illegible] eius heredib. [illegible] restituendus [illegible]
rata fructuum quatenus mariti suo[illegible] cavere ei debent, de [illegible]
tuendi illum [illegible] perceptione. l. fructus 7 § inter dos 15 iuncto § 1
ff. solut. mat. quinimo si maritus [illegible] matrimonio [illegible] dictis dotalibus [illegible]
[illegible] in eo [illegible] de damno infecto et soluto matrimonio [illegible]
dos sibi restitui postulat [illegible] restituenda erunt quae de indemni
tate marito [illegible] eius heredib. caveat, ut absit [illegible] cautione
periculum amovere. l. [illegible] mulier §§ [illegible] deinde si maritus [illegible]
dotale ad tempus [illegible] et [illegible] locationis tempore [illegible] matrimonio [illegible]
[illegible] locationi [illegible] marito facta, [illegible] dicunt [illegible]
vindicare [illegible] imperivas et quanti intersit locatoris [illegible] locationi [illegible]
[illegible] ut recte docent et disputant Pet. [illegible] [illegible] § [illegible] solut. mat.

12 [illegible] 12, [illegible] ad [illegible] de [illegible] 2. part. § [illegible] 12, Ant. [illegible] 2 [illegible]
[illegible] § n° 8 quo iure dirigi [illegible] ut [illegible] [illegible]
[illegible]; [illegible] iuris [illegible] esset potius [illegible]
[illegible] marito [illegible] eius heredi, [illegible] ut indemnes [illegible]
[illegible] mulieri restituere [illegible] [illegible]
[illegible] indemnitati d. l. [illegible] 28 § [illegible] Docent [illegible] primo [illegible]
[illegible] fab. de erroribus [illegible] decade 2a errore 3 et 4. [illegible]
[illegible] [illegible] 8. Cuy. in l. Unic. § tacent C. de rei uxoriae actione
ad hanc etiam partem pertinent [illegible], emptae et venditae hereditatis,
partis et [illegible] peculij, [illegible], dotis, et similes, in quibus immorari [illegible]
[illegible] [illegible] [illegible] desideramus [illegible].

[illegible] fideiussioni indemnitatis [illegible] alia [illegible] Vicaria fideiussio
[illegible] respondet [illegible] Titij nomine: [illegible] videtur respondere
[illegible] [illegible] 97 § 1 de [illegible] Maur. in hoc tra
ctatu 1 part. [illegible] 2 [illegible] 16 alias 25, [illegible] 9 [illegible] 33 n° 5.
[illegible] fideiussioni [illegible] obligationes quae habent [illegible]
[illegible] obligatio solvendi debitum [illegible]
[illegible] Molin. de primog. lib. 4 [illegible] 7 n° 31, et ibi addentes; [illegible]
[illegible] n° 41 et 42, 59 et 60; Demum Salg. in [illegible]
[illegible] n° 17 et 18, [illegible] obligatio quae [illegible]

quod dicimus abonadores, q simenciam ingua ligat aut velere quem aplant sementi in sub. i tu, ut aeral alio doces Amaiu inl. 2 de duo riimi exnio ... duitores fiscalis, q posteocumq duitores ... ... a fisco ... ... fiscus ... ... S. l. desene, et integr. ... ... mulier ... ... cum mulieri ... Ubi ....

Dissimilis uero ... deu ... ponit in ... fideiussor ... hoc ... in huiusmodi ... ... solverit fide sua esse iubes? hic eius ut ... excusatione rei principalis ... solvendo. idem ... excusat bona rei principalis ... fideiussio ... ... creditore ... tempore et ... mora ... ... qui ... ... uenit ... fideiussor ... idem ... solvendo ... posset et debere creditorem accipiendo fideiussorem huiusmodi id ... teneret ... reo litigare, neq illum ... ad solutionem; ... ... fideiussorem excusare; Unde infert, si reus ... illius fideiussore posse conueniri, q ... reum ... excusatio ... solvendi ... ad ... ... solutionis, ... ad potestatem solvendi ... ita ... ... in l. ... 57, et in l. ... 116 de V. O. Donell. lib. 15 ... cap. 2. ... licet ... ... 4 part § 7 n° 11.

Sed ut ad secundum membrum fideiussionis ... simplicem fideiussionem ... in ... ... exceptioni ... fideiussor ... hoc ... ... fideiussor ... ita ... ... et ante reum principalem conueniri poterat ... creditoribus ... potestas ... principalem ... fideiussorem ... l. 2 ... l. ... l. liberum ... l. ... hoc ... l. si mandaturo 22 § ... l. ... l. mandati ... 2 inst. ... § 3 ... nouell. 4; ... ad Donell. lib. 15 cap. 4 & ... nisi aliter dictum fuisset inter ... tunc ... conventioni standum esset l. ... § ... 10 C. hoc ... Sed si nouum ius ... fideiussor ... accepit ... conueniri ... quod reum principalem ... excusat ... ie nouell. 4. de fideius. ... authent. ... C. hoc ...

tit.

et S. fuimus 2. extra. cod. tit. l. 19 tit. 12 part. 5 docent in
relatione quos refert plena manu Ozerie Barb. in l. d. c. 2. n.° 2 ergo ad
dendi d. Salg. in lab. cred. 1 part. c. 23. § tot & prius ex
n.° 36 Fontanel. de pactis nuptial. tit. 1 claus. 4 glos. 9. part. 5.
ex n.° 39 et claus. 4 glos. 2. parte 3 ex n.° 32. Noguerol.
alleg. 40 ex n.° 58. Dominicus Vallens. recla dela 3. c. 16.
n.° 47. et seqq. nec. Vidal. ad Donel. lib. 15 c. 48 lit. I.
et sequentes.

n. 11

Ergo dicendum videtur interesse fideiussore indemnitatis et simplice
fideiussorem nulla hodie esse differentia ... quae ... pariter tantum ...
quae, ipsa excussio principali desiderata: immo quorum ...
multi auctores docuerunt ... fideiussor denovo iure obligari ...
... principaliter ... ita Vallens. ... Donel. ...
15 n.° 42, et ex ... Salg. d. prim. part. c. 23. ex
n.° 58. et nullus aut ... esse diff. ...
sa hac hoc. ... Mench. illustr. c. 33. n.° 5.

n. 12

Nihilominus
tamen dicendum est magna etiam hodie inter ... fideiussorem ...
... quae ... admonendi ... excussionis beneficium ...
... dilatoria ... fideiussori ... creditore, ante excussionem
reum principalem ... ergo duo ... tac. ...
... fideiussorem ante reum principalem ... excep-
tionem ... principaliter in l. de exceptionibus. 2. ...
... Vn ... ante ... excussio-
nis (ex iure regio ... dies ab ... citatione
rei l. 1 tit. 5 lib. 4 Recop.) ... opponi ... debet
re dilatorijs exceptionibus ... in l. Ult. C. de except. et ...
... notant Ant. Gom. 2 tom. variar. c. 13. n.° 14 verb. 3
limita. Gutierr. de iuram. confirmat. lib. 1 c. 23. n.° 14 et 15, Barb.
in collectan. ad d. c. 2. de fideius. n.° 3. Mench. d. c. 33. n.° 7
verb. secundo Herinc. in hoc tractatu c. 27 1.ª part. n.° 25 et
c. 28 n.° 15, Mauri. 6. part. c. 3. ex n.° 189. Salg. d. c. 23
ex n.° 76, Donel. in l. Ult. ... cred. ... 15. ...
... necessitate excussionis in simplici fideiussore non ...
... obligationis ... executionis ordinem
procedendi, ... qui ... debet ...
... obligationis ... ingrediatur ... illam

n.

13.

Adijiciatur, et purgata illa dubitatione indemnitatis cautio obligationis est accessoria et negotium pendet ab ea causa principali, ut in foro scholae primo regulariter reputatur et videtur ut dixi supra n. 1. Unde licet sero quod ius vero indemnitatis innotisset inibi annis, praesens ex iustitia ipsa debet de impropria extenso respectu effectus quando a fideiussore in tempore decreto ex concessione pro eius ut sequitur. Eiusque ratione Antonii Gomez tomo 3, et Salgado, quibus in fine tu...

Ex quibus principalibus deducitur aliud confluente tanquam a licet ratio ut fideiussores simpliciter non renuntiare beneficio excussionis, et concurrentibus praesente quo casu ante excussionem rei principalis poterit conveniri ut fatentur omnes Gut. de iurament. p. 1 cap. 23 n. 21, Barb. axiom. 93 n. 3, Pet. Duen. credit. 33 §. limit. 6. Sarl. lib. 2 quotid. cap. ult. a part. §. 7 n. 4, Hering. d. cap. 27 1 part. n. 186. Sequentes idem lib. 1 cap. 1 n. ... poterit tamen in causa renuntiatione beneficii, fecerunt creditori impedimentum, defendendo illas coram iudice, petere ut suo periculo creditor reum principalem excutiat, quia facere tenebitur nec poterit ante inquietare fideiussorem ut post alios docet Hering. d. cap. 27 n. 196; quare in beneficii excussionis renuntiatione recte apud nos addi solet clausula, y renuncio el derecho de las expensas, qua facta renuntiatione fideiussor creditori concludit. Et pro fideiussor indemnitatis renuntiet beneficio excussionis, et clarum regressus ut solutis, quando more creditoris vel solutis probatur principali ut in communi ... quando licere non renuntiare pro dicto beneficio ... tu Disserens Barb. Menoch. d. cap. 33 n. 7, Hering. d. cap. 27 1 part. n. 143 nisi veluti diligere in instrumentum videlicet, tanquam fideiussor in demnitatis, a sacar a paz y a salvo y enquanto pagaderse satisfaciendo reo principali. Et utilius ... renuntiavit beneficio excussionis tenebitur nullius momenti erit renuntiatio ut ... et magis ... regum. ex l. cum pro Cario 12 ff. de ... et magis considerata pro ea ... inexpertis tabellionum, quae ex sententia, uti in simili notat bene Menoch. d. cap. 33 n. 25 et 26, Valenz. consil. 1 ... cap. n. 49.

Secundo fideiussores indemnitatis liberari si creditor moram commiserit in conveniendo reo principali et ... ac ... inculcando. Fideiussores 41 hoc ... ubi ... fideiussor indemnitatis ... in quantum, adulti, a curatore ... barent ...

post.

[illegible] molestam legitimam [illegible] solidum servare potuit [illegible] ab ipso curatore quam a bonis hereditatis [illegible] ordinaverat noluitque agere et maturare quam potuit exinde mora creditoris reus principalis desinit esse solvendo, quaeritur [illegible] fideiussorem indemnitatis actionem instituere possit? [illegible] respondit non temere infideiussorem utilem esse [illegible] actionem dandam esse, dixit non temere quia ut odio denegetur actio creditori inveniendam [illegible] mora fecerit creditor [illegible] negligens fuit in conveniendo principali, oportet quod commonitus a fideiussore ut in tempore ageret [illegible] agere aut distulit aliquo tempore; in hoc casu denegandam esse actionem quoniam factum suum unicuique nocere debet, et quoniam deficiente dicto [illegible] quod falsum est dicere illum non potuisse a curatore exigere, cum pateat nisi negligens fuisset, et si [illegible] cognitas [illegible] creditoris non fuisse culpabilem, non est cur actio denegetur itaque [illegible] cognitas regulas circa qualificandam negligentiam creditoris, [illegible] proculdubio deneganda actio respondit, [illegible] circumspecte et cum modestia verborum. Ita paucis a tempore [illegible] in [illegible] explicarunt [illegible] ad eumque [illegible] 13 respons. [illegible] Donelli [illegible] iuridice et subtiliter [illegible], in [illegible] de reb. cred. n. 155, Nogueir. alleg. 2 n. 123 et sequentibus et alleg. 40 an. 58. Dominus Salg. in labir. cred. 3 part. c. 11 n. 56.

1 5

[illegible] dicendum est in fideiussore simpliciter accepto et ad [illegible] obligationum [illegible] cui non subvenitur, licet creditori denuntiaverit in tempore ut discutiat et experiatur cum reo principali, [illegible] necesse creditorem repellere potest [illegible] quamcumque [illegible] fideiussor [illegible] [illegible] decidendique excogitant [illegible] nemo invitus [illegible] agere [illegible] ut nemo invitus [illegible] creditor haberet iure antiquo electionem [illegible] conveniendi [illegible] et fideiussorem ut dixi supra n. 4, et nunc habeat [illegible] ex Authentica praesente ex notatis supra n. 18, non est ei auferenda electio [illegible] fideiussorem [illegible] quare [illegible] magis placet [illegible] Donelli [illegible] n. 5 quod fideiussor simpliciter acceptus non obligatur sub conditione si reus principalis solvendo non est [illegible] et statim; quare ab initio tenetur ut reus [illegible] principalis [illegible] quo fideiussit. Excussionis vero exceptio non ingreditur [illegible] nec illam immutat, [illegible] tantum respicit ordinem procedendi, et opponi debet a fideiussore quando ante reum principalem conveniatur, [illegible]

adhuc in Oneribus. Unde apparet Juan. Dilli Bol. secundum e ipsi post aut. authentica prente: Cum sit correctio non defecit, cum sequatur, omnes Oneriti, ante rem principale, quod in dicere sirceus principali prefixo tendosque: tunc qui correctio ne temere induienda in illis meriex ... fiat l. ... 32 ... dearest. Docent ... sic explicant Donell. et Salg. lib. 3... Mehchi d. q. 33. illust. n.° 8. Rodrig. de annuis reditibus lib. 2. q.° 9 an° 14. Noguer d. alleg. 2. n.° 123 quamvis aliter et non recte distinxerit post ... Hering. in hoc tractatu c. 20 § 15 n° 80.

Nunc operae pretium est digressione, quod sit exussio et quomodo fiat, ut sciamus quando et quatenus teneatur ad indemnitatem. Et simpliciter, acceptis, quando dicit authentica non denunciavit et lex ... in definitione inspiciamus, ... est iudicium inquo facultates debitoris principalis ... gravantur, ut ... adeo, ... secundo loco ... Sic ... definivit ... lib. 2 ... quot. c. Ult. 4 part. 2 ... n. 2, a quo ... parum discrepat Hering. hoc trad. c. 27 part. n.° 2. hec sit ... animo ... parandi ... obligationis fideiussorie, id est animo ... conveniendi ... fideiussore, debet peragi ... citato; quoniam ... agit ... praeiudicium, ... Hier. in hoc tractatu 6. part c. 3. n. 188. Dom. Salg. in labir. Cred. 1.a part c. 23 n. 45, et necesse est sententia declaratoria judicis, ... principalis non est ... solvendo, et ... executione facta, ut docent authores supra laudati, a qua sententia appellatione ... si fideiussor ... in instrumento publico ... habet executionem parata l. 2. ... 14 lib. 21 ... 4 ... d. ... pertinet ad ... executione ... paranda, ... potior ... executioni ... admonet ... lib. ... n. 22. ... fideiussor ... executionem ... nihil ... principali habere ... in sua ... pronunciari dicta executione ... Flor. de mena in additionibus ad Gamaz. decis. 99. D. Joannes ... lib. 4. ... n. 68. Salgado d. c. 23 n.° 66. Hec ... agit cum fideiussore. ... in loco ... debuit ... publicis ... debitores ... iustitie ... non fuit citatus ut docent ... in libello super ... hipothecaria ... executione

Tali ubi ... quia ... dict. civi ... Vaquer ... cap. 9 n.° 165 ... L. 27. ... part. n.° 201 ... Salg. n.° 32 ... Maur. ... n.° 188 ... ultim. Salg. n.° 32 ...

Bene tamen ... sent. ... excusio ... nunquam in ... auctoritate ... ut admonet Salg. d. c. 23. n.° 92 ... eiusdem auctoris doctrinae n.° 89 ... specialiter indicat bona ... principali ... ipsi ... sit ... audiendus est. Et bona ... iudicis mandato.

17

Videamus nunc quibus in casibus non sit excusio necessaria. Ita quando fideiussor ... indemnitatem ... renunciavit beneficio excussionis ... Fontanella ... excusio ... Franc. ... numero 530 Menoch. ... Mynsingerus ... 2 ... et alios ... credo ... iudicio certiores ... Vobis proponam breviter.

18

1.° Casus ... principalis est ... ut ... Docent Doctores Valenzuela ... cons. 19 n.° 53 Hering. d. c. 27 ... part. n.° 200. Velut ... renunciasse ... notorie ... bona ... Ohi ... creditores ... bona in manu iudicis ... excusio ... facta ... creditor ... magna dilatio ... Dicto ... n.° 15 ... Ved. ... 9 ... iudic. ... doctrin. Carleb. ... 2. tom. ... dise. 5 n.° 8 ... Barb. in ... Extra ... n.° 16 Molin. ... 164 ... 9. 7 n.° 31 Vaquer ... 112 ... 4. n.° 41 ... 29 n.° 163 ... Salg. in ... part. c. 23 ... ad numerum 18 ... quamvis ... disputandi ... Donel ... n.° 8 ... nihil operantur frustra ... Barb. ... 33. n.° 3 ... bona illius ... notorie ... habet ...

H

casu sequens é alter Sit quando debitori principalis bona q[ua]e habet sunt ita involuta et intricata ut nemini exposita inveniat empores: ut lite si sint obnoxia multis hipothecis, Censibus, aut alius obstaculis ut respectu dependentium vinculi anniversarij vel aut de alio consimili; tunc etiam his bonis existentibus tamquam sint haerent, excussio facta habetur; quod idem est nulla bona habere ac talia habere ut notte Hering. d. Co. 27 1. part n° 291 Thaur. arg. d. Q. 3. n° 158 Ant. Tom. 2. tom. Variar. Co. 13. n° 19. in princ. Noguer. alleg. 2. n° 113 Salg. d. Co. 23. n° 19

n° 19

Tertius Casus desumitur. Extd. authent. presente C. hoc tit. Sit fideiussor principalis in longinquis provincijs absit, et ita ut sine magna difficultate ad iudicium trahi non possit; quo in casu judex prescribere debet tempus fideiussori intra quod reum principalem in Iudicio sistat ut nisi fuerit facta, habeat locum qui tempus manet distinguendi arbitrio iudicis. Menoch. de arbitr. lib. 2 Casu 90. Hering. ubi supra n° 31 et sequenti, et 263 Thaur. d. Q. 3. ex n° 51. Unde Cum iudicio nostri auctores deducunt idem dicendum esse si reus principalis presens sit. Si venire non possit de iure et de facto; de iure, quoniam naaliter tamen sit obligatus ita notata supra l. Co. n° 2 ut si magistratus durante etc. ut in l. 2 ff. de lur. et Vali similes: de facto ubi si sit persona nimium potens, si petentia et litigiosa. arg. ex l. 2 ff. q. satisdare cog. quod etiam Iudicis arbitrio relinquitur, ut docent Gomez. d. n° 14 vlto § limita, Menoch. d. Q. 33. n° 34 Salg. d. Co. 23. n° 17.

n° 20

Quartus Casus superiori Conterraneus ut sint principalis bona existant extra pluntiam velut in regno Aragonis Navarre, aut in externis, neque eis agendus est Creditor longinquas regiones peragrare ut sua exigat, d. authent. presente, quomodo accipienda est Doctrina Antonij Fesaure decis. 4. 76 tota, Salgado d. Q. 23. n° 15 Barbosa in d. Q. 2 n° 12. Si vero sufficit ut excussio facta dici, bona sita esse extra territorium velut si Salmanticae agentus sit, et bona inveniantur in territorio Toleti, ut aliter censebat Hering. d. Q. 27 1 part n° 243: quoniam executio expedite fieret per literas requisitorias; quod est valde notandum quod in una Sent. Cancellariae ita vidi practicari.

n° 21

Non displicet etiam alius casus quem assignant Olivato de Donell. lib. 15 Q. 48 lit. N., et Hering. ubi supra n° 210 si fideiussor specialiter in ano

gatis

nº 22

gatur an, idem sor sit, ex quo negavit se fideiussorem esse, et postea de
mendatio Juillas ꝓ tendat excusionis benefitium, et est indignus,
benefficii omni, q de periurio, et demendatio Juincitur, et ꝓ hoc si
ita iudici visum sit stabitur discutere;

Et quo beneff. excusionis et si
militer fideiussori ideo conceditur q alienam causam, et sine interesse ꝓprio
suscipit, ut advertit Hering. d. c. 27 in prime; si intercessit fideiussor pecunia, aut mercede alliquo pro fideiussione facta, aut sic
rapta, pot. et iudicari non ei subanditur hoc beneffitium, quia, desectorio, quo
motus fuit Justinianus in d. auct. presenti, scilicet ratio commiserationis
ne stateret imperialiter advocati g. amicitia causa, quo alio periculum
subit, ut docet Barb. in d. c. 2. nº 10 ꝓ hac ratione stabat an
posset fideiussor intercedere, accepto precio pro fideiussione certa autem
e posse ut probat Gl. in l. si remanerandi § vlt. ff. mand. & l.
hoc iure 19. § 1º de donat. Ut in pluribus utriusque epistolae auct.
tenentur fundat Villa diego in form. libell., nº 132 vbi idem

nº 23

misma raçon

Ex fideiussione et necessarijs plurime est, quae tantum est indemnitatis et inga. satis e intercedere quanto minus neque
principalis facere posse nec fideiussores eis opponere ut beneff.º
excusionis renuntiare ut diximus sup. c. 2 nº vlt. alie vero
est ꝓ dictum q stare ad oe periculum obligant fideiussores, nec
obstare intelligi excusione cum principalis ꝓ iudicis auctoritate,
aut ꝓ qualitate causarum. qualis est iudicio sisti in civilibus et cri
minalibus de representando reum, iuramentoriis, et de tuto carceres
item satis dato iudicatum solvi. istis enim fideiussores, stare omni
tunc cum non accessoria nec opponere ꝓ Llarie principalis excusione
ut iuristae placuit; alios ex his exceptis tenentur. docent
Nicol. Boer. decis. 277, nº 3, Simon Crauetta Nilio, 272 nº 1º
Hering. d. c. 27. 1ª part. ex nº 316. Maur. 2. part. sect. 3. c.
3 nº 88 vbi limita 19 Et sic tenuit Abolla q. 2 miss
d. c. 2 nº vlt. q. accordium sit de necessitate excusioni in fideiussio
ribus necessarijs.

§ 1. De beneff. diuisionis quod vo
cant Epistolae Diui Hadriani

ut

nº 24

24

tiis agencepit q. Creterunt fideiussoribus, expe e Vt sequitur Gothofr.
et heredibus. inter nobilissimas vero novule e benef. divisionis
ilud Imp. Caes. Divi Hadriani ad q. monendi e hic q. e dno
tam sup. in hoc Cap. n° 10 sine dubio frequentiori sent. placuisse ut plu
res fideiussores accepti insolidum tenebuntur sive Vt unus q.
iret soliditatis periculum. Vt alias locuntur Cesares in l. 2 C. quo
q.ord. Iueniatur. l. 11. quamvis duorum principaliter, pro virilibus tan
tum tenerentur, nisi insolidum fuerent accepti ...

...

25

P. Vt exp. sin. ...

...

fideiussoribus

fideiussoribus efficiatur in solvendo periculosa aut onus ad fideiussorem respectum l. inter 91 §. inter 2 ff. hoc tit. quod est exceptio temporaria ut dicit ipsa in eo quod in tempore opponitur dividi debet et dividendo [illegible] obligatos, ut dividatur, si creditor pro partibus incipiat agere et singulos nec est post litem contestatam pot[illegible] [illegible] regredi l. liberum 16. C. hoc tit. [illegible] si solum nec volunt [illegible] divisionis beneficio et inter moras efficiatur fideiussor non solvendo, solutio ad eum solventis pertinet non nihil plus solvit quam de bono cum obligatio non est divisa ipso iure, [illegible] inst. l. inter 26. l. ut fideius[sor] in 39. ff. hoc tit.

Xinde si eius de [illegible], et obligationis plures sint fideiussores et [illegible], alter [illegible] et suo [illegible] acceptus, et quod [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pro [illegible] [illegible] exceptio dividit actionem creditoris, et [illegible] [illegible] partionibus, et exceptio peremptoria, [illegible] [illegible] in [illegible] [illegible] deficiente [illegible] obligationis [illegible] fideiussoris non obtinet [illegible] [illegible] in eum pro [illegible] parte [illegible] l. si plures 27 hoc tit. in qua notandum est [illegible] actionem, quod denotat ab illa obligatione pro parte [illegible] [illegible] [illegible]; [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] actionem et in hoc [illegible] [illegible] actio, quod [illegible] [illegible] [illegible] [illegible] [illegible] est actio [illegible] [illegible] [illegible] beneficio [illegible] ut in l. quamvis & §. quamquam 11 cum sequenti ff. ad S.C. Vell. [illegible] [illegible] 70 ff. ad l. Falcid. [illegible] [illegible] [illegible].

Merito

Cum hoc beneficio divisionis si plures fideiussores intercesserunt [illegible] ad quantitatem limitatam, [illegible] [illegible] singuli pro virili portione spopondere [illegible]; quoniam ex ipso [illegible] divisa actio est l. inter 51. in prin. hoc tit. [illegible] in [illegible] partibus [illegible] [illegible] [illegible] 4, in l. [illegible] [illegible] 10. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 26. [illegible] [illegible] tradit fideiussores limitate intercedentes pro alio [illegible], aut ex periculo alterius [illegible] in quo spopondit. Et si ad diversas obligationes accesserunt, unus ad alteram, et alter ad alteram; quia [illegible] est communi fideiussio [illegible] est commune periculum, neque est necessitas divid. l. si ob [illegible] 43. l. inter 51 §. duo 2 hoc tit. [illegible] [illegible] [illegible] [illegible] [illegible]. Unde [illegible] expo[nit] [illegible] [illegible] [illegible] in l. [illegible] 12 in princ. de duobus reis. in quo duo rei [illegible], et [illegible] [illegible] [illegible] [illegible] fideiussor intercessit: respondit [illegible] creditorem [illegible] [illegible] sua actione dividere, quamvis [illegible] [illegible] [illegible] singulos pro partibus [illegible]. Cum quod duo rei [illegible] in solidum obligati [illegible] [illegible] non pertinet [illegible] [illegible] [illegible] in [illegible] 83. [illegible] quod [illegible] fideiussores [illegible] [illegible] [illegible]

[illegible]ation

gationis, [illegible] vnus pro altero, et ad dissimilem aliam obligationem fideiussor diversis intercessit. Quare in hoc fideiussionis natura fideiussores aut correi; quod satis explicat Cuiac. lib. 11 resp. Papiniani in d. l. reos 11.

28

Quod in ipsis personis vide- iussoris notandum est, ad eorum heredes protrahendum esse; veluti si unus ex fide- iussoribus decedat herede aut heredibus pluribus relictis, qui in eius obligationem succedunt, nihilominus cum heredibus ceteri fideiussores actionem dividere possunt, quia cum eo- rum auctore cum eadem obligatio maneat: si tamen heredes omnes unius personae vicem sustineant, [illegible] l. [illegible] 27 § [illegible] l. si testamento 49 § 1o [illegible] q. si [illegible] hoc tamen ubi in duobus heredibus, uni fideiussori ex duobus succe- dentibus, ita [illegible] computari, ut ad utrumque dimidium onus obligationis perti- neat. Verum tamen est obligationem fideiussoriam ad utrumque in solidum descendere ut fuerat apud auctorem. Dico [illegible] fuerat apud auctorem, respectu utriusque fi- deiussoris [illegible] in solidum debere, ut auctor debuit; sed non singuli in solidum obligati; quoniam obligatio fideiussoria, quae dividua est, dividitur inter coheredes pro hereditariis portionibus. ex l. XII tab. l. 2 cum similibus C. de heredita- riis actionibus. Videtur implicatio in terminis, dicere obligationem fideiussoriam des- cendere ad heredes in solidum, et postea dividi inter coheredes: sed in so- lidum descendit, quia omnes heredes solidum debent ut debuit defunctus. Sed in so- lidum dividitur pro hereditariis portionibus inter coheredes, arg. ex l. 2 C. de hered. act. Igitur si fideiussor [illegible], poterit contra beneficio divi- dere actionem cum heredibus fideiussoris pro dimidia parte. rursus heredes di- vident [illegible] eius inter se. et [illegible] solvet virilem partem, quia inter ipsos ex l. XII tab. divisa est actio. Ceterum si fideiussor unus sit beneficio divisionis, et alter [illegible] coheredibus eo uti noluit: fideiussor nihil repetet ab heredibus confideiussoris. Cavetur enim alia epistola (ut ego existimo [illegible] [illegible] emissa a Divo Pio, filio per adoptionem Im- peratoris Hadriani eiusque in imperio successore) ne ullomodo confide- iussor qui divisionem non opposuit possit a confideiussore aliquid repetere, ut il- [illegible] Pet. Barb. in l. maritum 13 n. 36 ff. solut. mat. Sin vero alter ex coheredibus solidum solvit, videndum est an aliquid possit repetere? et distinguit Papin. divisionem quae fit per epistolam Divi Hadriani, a divisione quae fit hereditariis actionibus inter coheredes ipsos ex l. XII tab. quoad epistolam Divi Hadriani, aut repetitionem clare exclusionem epistola a Divi Pii: [illegible] tamen [illegible] [illegible] pro qua parte actio ex l. XII tab. divisa fuit. [illegible] 20 [illegible] 10 a coherede, [illegible] solu- dum solvit, hic est sensus illorum verborum d. § t. [illegible] non indebite

quanti [illegible]

32

26

quantitatis in deinde revocare in ultro casu sit tantum in casu in quo fideiussor solidum soluit, quia in casu in quo soluit solidum, alteri ex debendi eis, non est revocanda solutio si non indeuite quantitatis sed illius quantitatis quam soluit pro fideiussore, quoniam non erat indeuita cum actio non esset diuisa ipso iure. Si non illius quantitatis, quam soluit pro herede, qui quoad illam diuisa erat actio ipso iure, in l. XII. vitab. lege hic fauor et vera expositio dicti l. 49. §. 1 hoc tit. et rescripti autem diui Pij, cuius ibi fit mentio; quamuis aliter exposuerit Aux. n. 27 ibi. Quia ibidem faciendo d. tit. 11 Dec. Co. 20, qui de heredibus succeden. tibus in eius defuncti dixerimus et ita de diuo intelligenda n. 1 inter § et q. ff. l. C. hoc tit. de fideiussore vero fideiussoris, siue de vicario fideiussore in aggreg. quantum sufficit de eo dicitur supra Cap. 1 n. 16.

Hec autem exceptio peremptoria ut ego existimo, quod verum est si omnes fideiussores tempore litis erant soluendo sine diuidere pericula inter eos pro qualibus partibus, sed facta diuisione, obligatio non est parte perimi, ut amplius nisi pro virili fideiussor conventus teneatur quod notatur supra n. 25 et sequenti. quare quocumque tempore ante condemnationem opponi potest l. si fideiussor. 10 § 1 C. hoc tit. tenetur ibi est et Cod. de exceptionibus notant Mauri. Aug. 2 part. principali sectione 5. Cap. 4 n. 51 Matien. in l. 1 d. 16. l. 9. Coil. glo. 2 n. 2. immo si non prima instantia non sit opposita recte potest in 2a opponi sicut senet. agelo . sic ut resoluit Ant. Gom. 2 tom. Variar. c. 13. n. 15 nec tamen potest opponi per viam exceptionis cum fideiussor conventus incipit a creditore, sed etiam per viam actionis intentionis, si actor distulerit agere fideiussores videlicet ut certior in tempore querantur ne interim per dilationem creditoris collationem facultatibus et periculum in fideiussores redundet l. si petendat 28 hoc tit. ut eam explicant et ad praxim reducunt Couarr. lib. 1 Variar. c. 18, fere post. Molin. de orig. gen. lib. 3. c. vlt. expos. 30. Vila d. inform. lineal n. 112 Dominicus Sang. in labir. credit. 1a parte q. 2 § 2 expos. 7, Gering de fideiuss. c. 25. expos. 132. quo casu opus est, ut fideiussor agit deponat expensas ad judicium diuisionis ut docet Mauri. ubi supra expos. 10. Unde notandum verius cuiusdam dicti inter hoc beneficium et bene ...huius excussionis. fideiussor cum non potest cogere creditorem, ut reum principalem conueniat dixi supra n. 15 et tamen potest cogere ipsum reum principalem oblatis expensis ut discutiat ... fideiussorem, quod est per chirographa limitatio ad l. 3 C. ut nemo inuitus agere vel accusare, notant interpretes supra laudati, ab his que hic notaui necessarissima non est recedendum in iudicando et consulendo, ceterum si fortiter disse

H

tandi nos reiiciamus et verus sensus Pauli in d. l. non extendat nihil mi
nus probat aut significat, quam quod veteres, et pragmatici existimant
quilibet nomine intellectu, meminisse ... Intendit. Accedit
et Cujacius, et exp. sup. Cap. lib. 25 Pauli ad edictum sup eadem lege

30

ut frequentiores, et frequentiores, certiores quod exceptiones huius regulae ... (superest)
... deceneamus. Prima si renuntiatum sit beneficio divisionis quo casu
ad illud fideiussor non admittitur novella 99. ut agnoscit Ant. Fab. lib. 11
Rectinarum c. ult. et docent recentiores Hering. d. c. 27. 2 part. n.o 73.
Mauri d. c. 4. n.o 31. et apud nos sancitur in d. l. 44, et 70, lo 18 m.
cum seq. ... d. 2 tom. c. 13 n.o 15. ... in d. l. ...
glossa 2 n.o 1 et 5, Ubi ... n.o 2 Rodrig. de annuis reditibus lib. 2
q. 5 n.o 12 Noguer. alleg. 4 n.o 37. Secunda ... obligatio e individua,
quoniam nulla lege aut constitutione excipit, cum individua divisionem recipere valeant, arg. ex l. stipulationes 72 de V. O. notat Hering. d. c. 27, 2.a part.
n.o 92 — tertia e. si fideiussor in judicio interrogatus an fideiussor sit, negat
se fideiussorem esse, et postea iudicialis de fideiussione et ... pretendat, divisionis beneficium quod ei minime licet l. si dubitet 10 § 1.o hoc tit.

31

Quarto fallit in fi
deiussoribus tutorum, qui divisionis beneficio non gaudent, quoniam pupillus cum ipsis
non ... in eos incidit ignorat quod omnia ... gestata. ut eleganter Papin. loquitur
in l. ult. ff. rem pupilli salvam fore. Divisionis beneficium in equitate fundatur et
maior equitas est pro pupillus quod cum tutoribus ... distringatur dividere actiones,
et per diversa forte tribunalia, diversos convenire fideiussores ut cum dignitate exponit Cuiac. lib. 12 q. Pap. in d. l. ult., ex quo fit ut si post finitam tu
telam pupillus iam pubes factus pro reliquo administrationis iterum eosdem acci
piat fideiussores novo ... dividatur actio, inter novos fideiussores
... de fideiuss. tut. ... non procedens, si quando pubes discutit eos quos
... accepit fideiussores, Cuiac. ... exponit ... illu
... Papin. in d. l. penult. quam ... emendat Ant. Fab. lib. 11 Rectinar.
c. ult. quaedam opponuntur huic limitationi ... 1.o Opponitur ...
in l. pupillus 6. C. eod. tit. de fidei. tut. Ubi docemur fideiussores tutorum
conveniendos esse pro virilibus quod interest actio fideiussoria dividitur ...
... longe diversa est species illius loci quam vulgo putatur; ibi enim plures
... tutores pupillo, singuli tutorum, singulos aut ... separatim fide
iussores dederint; inquit Papin., quod periculum tutelae inter tutores dividitur, si
... idonei sint, ... tres tutores ... de administr. tutorum, l. ult. de pup. sal. fo.

l. 2. C. de divid. tutel; et ea exponunt persona dividi inter fideiussores pro-
culs ut fideiussor primi non in solidum conveniatur, quia sunt principales, et conveniendus
et sic, ea de fideiussore secundi. ita q. in hoc ... non agit de fideiussoribus
pluribus eius de obligatione P. de fideiussoribus diversorum, quare singuli ...
obligati ... ex ... Exponunt ... lib. 2. resp. Papin. in d. l. 6. Herin.
d. 2. part. n° 52. Valentia lib. 2. illustr. tractatu 4. q. 3. n. 5. 2°. opponit.
ubi in l. 1°. §. nunc tractemus ... seguente ff. de tutel. et rat. distra.
hendi, ubi Ulp. ait si plures tutores administraverint, et ... soluendo
sine fruitis tutele, et ... reddit. tempore, ... dividi inter eos
actionem exemplo fideiussorum, et inter tutores fideiussores dividitur actio ...
... ali junxiant ... jure ... in eo ff. de fideiussoribus tutorum ...
... fideiussoribus ... et separatio est ... fideiussores, ex ...
Divi Hadriani dividitur actio sic exequitur et iure ... introductio dividitur inter tutores.

n°
32

Quinto falle quando fideiussor inutiliter ab
initio intercessit, nec eius alteri divisionem in casu impetrare potest ut ele-
ganter disputat et decidit Papin. in l. si finis 48. hoc tit. ... si mas.
et femina intercesserint, subducta femina ab intercessione ex Senatusconsulto
Velleiano, actio soliditatis manet ... quia femina ab initio
inutiliter intercessit, ne potest mas postulare ut dividatur actio cum ea
non efficaciter obligata, hoc est ... et ... Valentia d. q.
3. n. 5. alia ... Papin. ... ut ... mas ... potuit ...
ignorare debuit, quod intercessit ut ... et de jure, hoc ...
valde ... ad casum sequentem in quo disputat Papin. de duobus fideiusso-
ribus, quorum alter erat maior, alter minor 25. annis et ... verum
idem ... et dignoscere ... de mare et femina ... multo aliter dis
tinguit, quod si prius intercessit maior, mox minor et per restitutionem
exemptus ab obligatione, non poterit maior dividere actionem, quod cum ab
initio solus intercesserit, esse exposuit ad periculum soliditatis, ni-
hil cavere potest, quominus solidi ex actione sustineat; contra si ambo
eodem tempore intercesserunt, potest maior petere ut dividatur actio; nec his
casus similis est superiori, quia in femina semper certum est, et sine ulla
tergiversatione competentia eximitur non teneri: at in minore non est
ita certum ... arbitrium status et restitutionis, ut summo cum ingenio
loquitur Papin. in d. l. 48. idem quia in minore adest causa incertitudinis
... quia non ... dignoscere statum quam ... arg. ex l. minor. 32
ff. de minor. deinde quia et si dignoscetur status, incertum est ... res

restitutionis

renunciarit, et pendeat a [illegible] ordin. decreto [illegible] in lo. 1. incid. [illegible] deminor. [illegible] magis spectare potuit, q[uod] intercesserit cum minore, quam q[uod] intercesserit cum femina. plane [illegible] dividi[?] actio in odium creditoris si dolo a creditore inductus minor intercesserit. hic e[st] sensus Papin. de quo videndi [illegible] Costa in q. [illegible] 1ª par. [illegible] indistincte n. 6 Benedict. Pinell. lib. 2 select. [illegible] 14, nº 13, et 14. Ant. Fab. lib. 11 Dictum. [illegible] 5. et 6. Cuy. lib. 10 q. 3 Papin. ind. l. 28. Hering. d. q. 27. 2 par. expº 6 [illegible] Opponitur etiam huic limitationi [illegible] in l. si paterna § [illegible] adl. Vellei. [illegible] Velde [illegible] opponitur q[uod] ex illa l. tantum pt colligi intercedenti [illegible] marito et feminis simul, si femina [illegible] ab obligatione eximantur, masculos pro [illegible] in id q[uod] spoponderunt, [illegible] limitat, limitatione potestatem dividi; [illegible] inter § 1 hoc [illegible] si vero indistincte promiserunt tanquam fideiussores n[on] poterit mas dividere obligationem cum femina, d. l. si [illegible] 28. sin autem intercesserunt tanquam principales, et insolidum se obligarunt, n[on] potest [illegible] etiam dividere [illegible] Divi Had. [illegible] ad principales [illegible] ante [illegible] Iustiniani [illegible] de qua in authentica hoc ita C. de duobus reis ut post antiquiores [illegible] Valenzia d. lib. 1 illust. tractat. 2 q. 3. expº 7. quam [illegible] exponant Cuy. lib. 10 q. 3 [illegible] d. l. 28 Hering. [illegible] d. 2 part. expº 2. Opponitur quoque [illegible] in l. idem 18. ad [illegible] Vellei. [illegible] affirmari posse dividere obligationem eum q[ui] simul cum femina, et alio reus intercessit, [illegible] facile [illegible] solutio si [illegible] a fine legis antecedenti a quo pendet d. l. idem 18. [illegible] in l. precedenti; simuliere [illegible] intercesserint, et nulla forte [illegible] [illegible] tanquam duo rei. Videndum e[st] atque, et quatenus [illegible] negotii [illegible] [illegible] si in solidum ad mulierem spectavit n[on] gaudebit [illegible] [illegible] vero p[ro] parte subabitur auxilio Velleiani p[ro] qua parte [illegible] n[on] reportavit, [illegible] parte alieno nomine intercessit, mox subiungit idem dicendum e[st] si [illegible] [illegible] intercesserunt, q[uod] [illegible] explicanda e[st], [illegible] intercess. nullum [illegible] habet mulier insolidum iubetur [illegible] quod [illegible] reportavit ex intercess. pro tanta parte iubetur n[on] [illegible] inde dicendum [illegible] parte eximi ab oblig. q[uod] [illegible] in [illegible] in [illegible] [illegible] tractarunt [illegible] tantum deducendum e[st] [illegible] parte [illegible] [illegible] tenetur mulier, igitur simuliter [illegible] insolidum [illegible] ut in d. l. 28 ita videtur explicare hunc locum [illegible] 4. ad [illegible] ind. l. 17 § ult. Fab. [illegible] ind. l. 18 Valenzia d. [illegible] [illegible] optime [illegible] Rod. de annuis redditibus lib. 2 q. 5 expº 21 [illegible]

[illegible]

fing. Cap. precipue n. 23. et licet breuiter idem docuit Hering d. cap. 27 2. part. n. 60.

Que cognita limitationi b3. breuiter etiam, ut curramus, ampliationes omni Venetijs sciendum est. Cum Diui Ital. sanctum fuerit de fideiussori b3. ut hactenus vidimus. Papin. in l. penult. de fideiuss. tutorum authus fuit eam extendere ad mandatores et ut fideiussores se subijciunt alienam obligat. sine proprio modo, ita et pleriumque mandatores ... Papin. ind. l. penult. nec obstat tex. in l. similiter 59 §. Paulus 3. ff. mand. Vbi docet Paul. singulos mandatores in solidum obligari ... hoc enim negamus ...

... Venetis ... Fab. in d. ... Vallens. d. cap. 3. n. 2. quomodo exponendus est tex. in l. ult. ... minime etiam obstat tex. in l. ... de duob. ... eod. ... de duob. mandatori b3. ... de duobus mandatarijs ... proprio facto obligant in nomine alieno nec adhuc ... sed ... expromissores quamuis ... aliena obligos sine proprio modo, et ex aliena causa se obligarunt, quamuis ... principalem ... defendi et, etiam ad eos hoc Venetiis ... Vtilitati: atque quamuis non habeant ... authoritas ... auctoritas tex. ... Pap. in l. si Titius 48. hoc tex. ... a Iustiniano ... C. de ... et tandem ab eodem in nouel. 99. Vnde ... hoc ... de duob. reis ... ut duo rei in solidum obligati ... fideiussores, quasi expromissores ... quo ... explicata fuit ... nimie ... cessarunt.

Restat ut eadem ... de iure nostro Regio ... sciendum est ... 3. tit. 18. lib. 3. ... lege reducta fuit ad Vnam ... Veneti ... Diui Ital. ... ut liceret statim ad ... fideiussorem in solidum agere. Omisso reo principali et ceteris fideiussoribus ... nec ... obstat ut ... de inope debitore cap. 5. n. 3. ... de iuramento confirmatorio 1. part. cap. 23. n. 1. ... de annuis ... lib. 2. cap. 5. n. 9. ... in l. 8. tit. 16. lib. 5. ... generaliter statutum fuit in ... debitoribus tam principalibus, quam accessorijs ... ab initio, nec ... conueniri nisi expresse in solidum se obligauerint, ... notarij ... de ... in solidum ... indiuisim ...

iarde

Valde notandus ut magnas diff. eruamus inter hanc. 1. Quia patriae erit Diui Had. 1. e. Iratz ipso jure diuid. inter eos obligat. nec o pos et Conditione exceptionis; quod singuli ab inido partes debeant; itaque judi non Actio diui ingredien. maa obligati ipsius, et esse quod sup. disputaui, n. 25. et 29. 2. e. si fideiusso partes debilis tota soluit, pro partes recu. re indiuit soluta; quod debebat plus soluit quam debebat, quo derogans fuit Epistola Diui Pij, et illi iuri quod explicaui supra n. 28. 3. e. Amen fide iussores certi. quantitate limitatas, id est ad virile portionem intercedere quas iis id quod non expliment. ex iure Romani partis obligarent ut notaui n. 27. Quoniam sive insolidum obliga berine et sine benef. diuisionis singuli insolidum conueniri potuit, nec audiendi si pretendant benef. nostrae legis. Docent latius licet in glossa Azeb. ind. 1. 1. Ubi Matienzo, pretij glo. 2. Gregor. ind. l. 8. glo. Ult. tit. 12 parti 5. Felix de censib. 2. tom. lib. 3. q. 2. et 3. Rodriguez de annuis redditib. lib. 2. q. 5. per tot. Tut. lib. 1. de juramento confirmatorio Cap. 23. expt. 9. Pich. in §. si plures. n. 17 inst. 3. hoc tit. Valen. lib. 1. illustr. tractatu 4. q. 4. Carleb. de judi. 1. tom. disp. 5. n. 7. et 10.

§. 2. De Beneficio cedendarum actionum.

n. 35.

Succedit aliud beneficium fideiussoribus. Scilicet, dicitur. Vulgo ab interpretibus nostris cedendarum actionum. q. Ut breuiter et distincte explicemus, notandum est, fideiussor qui pro principali soluit ut ab eo exigat quod eius nomine soluit actionem mandati habere si rei mandato intercesserit, et sic est eius patentia. l. indebita 47 de solut. indebiti. l. si remunerandi. §. si quis 2. l. idem §. 10. §. Ult. cum duabus legib. sequentib. l. heredes 14. l. inter causas 26. Tertius §. 3. l. rogatus 33. l. q. fide. §. 3. ff. mand. l. si fideiussor 6. C. eod. tit. §. si quid. inst. hoc tit. C. 3. Extra. eod. tit. l. 12. et 13. tit. 12 partit. 5. q. si ignorante et absente intercessit, et soluit habet negotiorum gestorum actionem. d. l. si remunerandi. §. si quis. l. ex mandato 20. §. 1. ff. mand. l. 3. §. Ult. l. 1. Videamus 4. l. libero 31. de negotiis gest. in. uma fideiussor qui reo soluit semper aliquam actionem aduersus eum habet nisi donandi animo. et quod dicente fideiubeat d. l. 3. §. Ult. de negotiis gest.

d. l.

d. l. sine remunerandi 6. §. si vero. l. si pro eo ff. mand. Hering in hoc tract. q. 25. a princ. et alij quod amicus meus meritissimus primarius Vallisoletanus, Alfonsus de Olea. de cess. jurium et actionum tit. 5. q. 2. n. 23. inqua mandati actione dicto fideiussori competenda tradi ex interitu obligationis principalis quoniam eo ipso quod fideiussor soluit et obligatio principalis sublata fuit, obstringit debitorem principalem fideiussori: tunc esset expositus mandatarij judex loco intercesit ut solueret; quod vero negotium ipius capit illum liberauerit, ut acute sentit Schifordegher ad Fabrum lib. 2 tractatu 8.

2. deinde notandum est dictae mandati ei personalis. T. eius principalis fideiussoris heredes; ... nulla causa hipoteca ... tenere negotia ... pote ... et dict. ... hari Fontanel. de pactis nuptialibus. claus. 4. glosa 18. part. 2. n. 70. Olea d. q. 4. n. 12. quare neque fideiussore potest ... nullus eis fideiussoris negotius gestus fuit cuius sine ... a aliena obligatione teneretur. l. si fideiussor ... Ubi notatur. hoc tit. l. si a alter ... cod. tit. Rod. de annuis redit. lib. 2. q. 9. et 13. fere per totam

quare ut pleniori remedio fideiussori pro alio soluenti ... Equitas suadente, a creditoribus inductum fuit ut in alicui fideiussori cogi pro se soluere quod ex intercess. debet, quae si a creditore cedere praestaverit actiones, quae illi ... competebant, l. 2. l. cum alter ... l. mandati 14. l. sicut 21. C. hoc tit. l. fideiussori ... 17. l. cum his 36. ff. eod. tit. q. 2. ... eod. tit. l. cum ... ff. decensi ... Donel. lib. 15. ... et ibi Osual. Hering. in hoc tract. q. 27. 3 part. Maur. ... 3 part. principal. 6. q. 4. Rodrig. de annuis redit. lib. 2. q. 9. ex n. 13. Noguer. alleg. 11. ex n. 39. plurimosque adducit Olea d. tit. 5. q. 1. n. 19. et 20.

n. 36.

n. 37.

Exqua ureui di

ff. multa notanda. Primo ut pro hoc beneficio pro creditore a fideiussore remoueri nisi paratus sit in illum actiones suas transferre d. l. 2. C. hoc tit. ibi debet. quod meda in via ordin. et executiua opponi potest, ut procul omni dubio docent Hering. d. 8. part n. 17. Rodrig. d. q. 9. n. 23. Ant. fab. lib. 11 ... q. ... exl. 1. ... 18. ibi ... post ... denunciationes l. cum pupillus 22. ff. de tutele et ... distrahi. l. fideiussores 41. §. 1. hoc tit. ... post ... additiones ... ut cum multis docet Olea d. tit. 5. q. 3. n. 34 et 35. nec obstat quod ... in l. si minorum 25. de administ. tutor. Ubi videtur ... exigere ... ad hoc ut ... uti hoc bene ... quod in via executiua et postquam ... transijt, in re judicata opponi

n pot: alioquin exp.... appellatio necess.= quae difficultates vidit sub tilis Antonius d. lib. ii. Rechur. q. 10, et etiam videtur fagere, ingenio se adijcit §. ubi ait, et ita legis sindici judicate fecerunt, per quae provocarent §. ut sensus sit: sindici solverunt, et si appellarunt, in iudicio de executione quae appellationi opponere pote doli exceptione ut . cedant actiones. ... religiose vulgatam literam velitis retinere dicam legis sensum sine ulla abiectione pote ex ea digni, et explicabo illud provocarent ... idem si provocaverint, quo casu provocent, ut ... pote eandem exceptionem opponi, etiam si provocaverint, ... casus appellationis interpositae, quae deo ... tractabat ... d. Rauconi ab ... in l. alterius 20 §. 1. ... dist. ... appellationis ... judicatum ... exceptio ... et si appellaverint ... impositae ... provocaret ... lib. 2 ... Papin. ind. 20.

n° 38.

Secundo deducitur ... cessione actionum eadem iure obligationis pignorum ... privilegii pote ... creditor ... principalis ... l. fide iussor de distr. pig. l. Paulus ff. l. ... mandati ... iuncta l. ... §. ... ideoque ... cessa ... instrumenta actionis cum executione ... cessionarius, adversus reliquos debitores ... cessio fabricavit, executive agere poterit: modo igitur instrumentum cedat ... authentice ... instrumento cessionis: quod alioquin ... cessionis instrumentum ... ac ... primordiale et primitivum referat. Docent utiliter Nuñez de Avend. lib. de las Excepciones n° 20 et 23. Rodrig. de annuis reditib. lib. 2 q. 17. n° 2 et ... nib. et ... Hering. d. 3. part. n° 7. Gomez de Leon. in centuria informationum ... Petrus Barb. in l. si ... n° 60 et 61. Sed matrim. Ant. Fab. lib. ii ... q. 9. Olea d. tit. 5 q. 4 n° 11 nec obstat ... d. ... partit. 5. Ubi fideiussor ... pignora ... obligationi ... principalis ... in sortis ... deducti ... sit. quoniam in hoc ... agit de redemptione ... actionis ... de emptione pignoris ... fideiussori ... Cuius ... occasione de redemptione facta census annui reditus per fideiussorem, Olea d. tit. 5 q. 2 n° 4. Rodrig. de annuis reditib. lib. 2 q. 17. n° 28 ... alter in l. mandatum 59. §. 1 ff. mand.: ...

Quali

Si pperam Ant. fab. de error. prag. decade 9 error. 4 et nri D. ferdinan.
Ebias demesa lib. 1° Variar. q. 9. et 10

3°. dedui et tales a creditore N° 39.

cedendas ei actiones quales apud eum st, et illi spetunt: quare creditor certus
ndebet omittere maiorem efficatiam quam habent, nec de evictione aut se
curitate tenetur etiam si et in totum, et pro parte effectu careant, ut ex l.
si fideiussor 62. hoc titulo. recte probat Rodrig. d. lib. 2. q. 9. n° 11 et 23. et
exemplis illustrat, Ant. fab. d. lib. 11 Ditet. c. 14, nisi creditoris facto
deteriores cedantur. l. si thius 95 §. 1°. de solutio. Veluti si alteri ex correis
portionem debiti remisit; lo enim casu quanto magis remisisset tanto ma
gis tenetur, ut is minus exigat et tantundem de suo cessionario prosol
bat. nec hac in re distinguendum inter fideiussores et mandatores
ut fecit Ant. fab. Ubi supra. quoniam aequa utrorumque ratio et aequitas est
factumque suum possit in cessione creditoris: d. ex l. fideiussoribus. 17 hoc tit. et
l. si pupillus 21. de administ. tutor. Fab. acriter et recte Duin.
cit. Olaid. tit. 5. q. 2 ex n° 26. adversus quam sanam et certissimam doctrinam solet
vulgo opponi text. in l. si stipulanti 15 §. 1 hoc tit°, Ubi proponitur duos intercessisse
fideiussores pro 20.; a quorum altero 5 creditor accepit, ne ab eo plus peteret, neque
deinceps inquietaret: pactumque ex hac tam fideiussione initum cum altero fideiussore
de nihil ab eo petendo, quaeritur utrum alter fideiussor liberetur? et respondet
Julianus non liberari, quod pactum cum altero fideiussore initum alteri non pro
dest. l. fidejussoris 23 ff. de pact. Ant. fab. lib. 11 Dictar. c. 15, quin=
que autem quae accepit ut alterum liberaret ab altero petere non poterit, cum
dolo faciat, si bis eandem quantitatem petat; ad vero reliqua
quindecim receperit a fidejusore, recte petet nec ulla poterit excep
tione repelli: non pacti, quia consfideiussoris pactum ei non suffragatur: non divi
sionis, ex lect. Divi Adr., quia obligatio dividi non pt, cum eo qui efficaciter
obligatus non e. l. si tibi 48, hoc tit., ex hoc text. ita arguunt
interpretes omni. nullam pot. exceptionem submoveri creditor, quod deterio
rem actionem reddidit per pactum prius nisi quam partem pecuniae
accepit. quod neque poterit submoveri exceptione cedendarum actionum
in jure, si fraudulenter et liberaliter alterum fideiussorem liberavit ad
quos virilis portionis non poterit adstringi. huius text. de crecorium
quidem sententiam tergiversavit fab. d. c. 14. et multis modis exponere ten
tarunt laudati ab Olea d. tit° 5. q. 2. n° 30. / ego sine melioris intel
lectus non judicio existimo in eo non disputari de exceptione cedendarum actionum
quae si veritas agnoscenda e nunquam hoc beneficium dicitur exceptio in jure

nrn

tro, potius licet opponit exceptione doli opposita, si creditor paratus non sit actionem suam vendere aut stans fere in fidejussore. l. si minori 25. de administr. tutorum, aut officio intentionis et officio judicis, ut compellat creditorem ad vendendum cedendum q. l. fidejussor 17. ibi: succurri solet hoc tamen ideo et post condemnationem, et post sententiam addictionis locum habet hoc beneficium ut notavimus sup. n.° 37. quamvis minime in jure admitti posse, si bene fitum cedendarum esse post exceptionem arg. ex l. ult. C. de exceptionibus. quo quamvis julianus ind. l. 15. § 1. universaliter neget ex post facto ullam exceptionem nasci, alteri fidejussori: minime negat posse illum impetrare beneficium cedendarum actionum, quod creditor cedat vel ...ibus actioni bus ... talibus, quales illas habebat ante factam ..., qui post facturum id est post factam condemnationem

n.° 40.

Sequitur ut dispiciamus quo tempore et modo cessio faciendarum. et sane, si rigor juris et stricta dispositio attendatur, ante solutionem in ipso actu solutionis cessio celebrari debet: alioquin si post solutionem sublata est obligatio nihil superest. q. transferri possit l. cum alter 11. C. de fidejussor 39. ff. hoc tit.° l. Modestinus 76. de solutionibus. l. 1.° C. de pro judicio et utiliactione. Donel. ind. l. cum alter et sequ. 15. comment. c. 44. ubi Osuald. Ant. Fab. l. 3. 11. Diecheur. Cap. 9. Ahrif. ad eundem l. 6. 2 tractatu 8. q.° 2. et 3. Larr. Vaguer. alleg. 11. ex n.° 34 ad 56. nec tantum haec doctrina est vera in correo petente beneficium cedendarum; sed etiam in fidejussoribus. d. l. cum alter 11. d. l. ut fidejussor. 39: militat licet eadem ratio, quo soluente fidejussore eque tollitur omnino obligatio rei principalis et accessoria. l. ubi fideiussor 24. l. fidejussore 52. hoc tit. l. et post jus jurandum 13. §. si fidejussori de acceptilatione bus. Hering. tractat. cap. 20. § 1.° n.° ... apparet pere aliud dicendum est in l. 11. et l. 12 ... ubi ... censori ... si fidejussor ... soluerit ... nomine ... ab obligatione ... creditoris liceret in nomine rei principalis; ... cessione quasi superius actio principalis ad cedendum ... per solutionem ... extincta. Ceterum si solvat sine ulla cessione aut protestatione ... locum, quod ... obligatio sublata fuit. ... auctoritatem juris sepes ... sublimendam est, ... ab auctoribus. ... ut ... ex bona fide agnoscit. Olea d. tit. 39. a 4 ex n.° 13.

Potest autem ... replicari. Etiam si cessio actionum fiat ante solutionem, inutile prorsus esse, quod secuta solutione, evanescit obligatio

Et p. ...

81

[illegible] actio, [illegible] agnoscit [illegible] hanc [illegible]
[illegible] 36. [illegible] respondit pecunia ac [illegible]
[illegible] soluta ad dissoluenda obligationem, qua[m] ad actionem emendas
[illegible] ut magis cedat in [illegible] emptionis, actionem, quae in extinctione
obligationis principalis aut accessoriae. Ideo requiritur [illegible], et [illegible]
[illegible] [illegible] cessione [illegible] obligationes [illegible]
[illegible] dissoluendae obligationis, [illegible] Paulus [illegible], a [illegible]
[illegible] pupillus 21 de administr. tutorum [illegible]
[illegible] [illegible] 11 [illegible] 9. [illegible]
[illegible] [illegible], nomen [illegible]
[illegible] [illegible] [illegible]
[illegible] 11 [illegible] 11 [illegible]
[illegible] Rodrig. [illegible] 2 [illegible] 10 n. 7 Olea [illegible] 12

Etiam [illegible] aliquod [illegible] cessio [illegible]
[illegible]; [illegible] auctor [illegible] 76. de
solutionibus. [illegible], quocumque tempore solutio fiat semper habere locum
cessionem. [illegible] dicendum [illegible] ideo [illegible], [illegible] obligationes cedi; [illegible]
fuerat [illegible] solutio [illegible], [illegible] erat actio [illegible]
[illegible] Papinianus 28 [illegible] mand. [illegible]
95. [illegible] mandatum 8. [illegible] si mandator pecuniam soluit
creditori, post solutionem actio cedi [illegible], [illegible] hoc animo soluit, ut
liberaret debitorem pecuniam [illegible], [illegible] liberaret, [illegible]
obligatione, quam [illegible] mandato [illegible]. igitur [illegible] obligatione actio
[illegible] [illegible] posset transferri, [illegible] Paulus 101
de solut. eodem modo [illegible] in [illegible] minoris 25 [illegible] tutoris
[illegible] soluerint, [illegible] pariter tutores, quondam [illegible]
debebant, locus est cessioni actionum: quoniam soluerunt esse a sua
obligatione liberarent [illegible], [illegible] similiter, [illegible] obligatione 57
de [illegible] 1°, [illegible] fideicommissarius soluit [illegible] obligata, quam
[illegible] reliquerat, [illegible] soluerit, [illegible] Fab. [illegible] 11
[illegible] 10, ab heredibus [illegible], [illegible] ut impetraret cessionem [illegible] soluit animo li-
berandi heredem [illegible] redimendi [illegible] nec alia ratione [illegible] Dominus 23 in principio
[illegible] licet [illegible] animo implendae conditionis, et adipiscendi liber-
tatem soluisset pecuniam, pro domini sui debitoribus, [illegible], et heredes, [illegible]
[illegible] cessionem actionum ab heredibus domini [illegible] debitores; [illegible]
[illegible] modo soluit, quam animo liberandi debitores, ut docent [illegible]

[illegible]

explicant Ant. Fab. Vitoru. ll. [illegible] cap. 10 et segq. [illegible] l. lib. 2 tractatus [illegible] 5. Noguer. alleg. ll nº 56 [illegible] princ. in [illegible] quomodo res dicitur [illegible] nº 58 Clea. d. 4º 5. q. 4 ex nº 6.

Ex his apparet post solutionem quae tollit obligationem non remanere locum cessioni, quamvis ante [illegible] ex jure speciali, rescriptis [illegible], etiam post [illegible] obligationem, actio quasi [illegible] solventi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] parte [illegible] [illegible], tribuitur actio utilis [illegible] 1ª § [illegible] de [illegible] et [illegible] [illegible] ut dixi, est utilis [illegible] introducta. nec est ad [illegible] [illegible] [illegible] [illegible] docent Fab. d. lib. ll [illegible] ll Zonarius [illegible] 15 [illegible] cap. 12 [illegible] tertius Hering. d. cap. 27 § 3 nº 15 [illegible] Clea. d. 4º 5 [illegible] ex nº 20. Quare [illegible] Peregrino de jure fisci [illegible] 7 nº [illegible] quos adducit [illegible] Noguer. d. alleg. ll nº 5 [illegible] considerandum est, in [illegible] in ipsa [illegible] [illegible] cessionem actionum [illegible] [illegible] [illegible] [illegible] [illegible] in fraudem 45 [illegible] [illegible] [illegible] [illegible] [illegible] ll [illegible] [illegible] § [illegible] de [illegible] [illegible] cessio in forma [illegible] nonis tempore ut debitor in jura [illegible] succedat [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] inter [illegible] solutionem cessionem desiderare ut [illegible] S. [illegible] docent Fab. [illegible] lib. 3 tract. 23 q. 23 [illegible] [illegible]

Hoc beneficium [illegible] competit fidejussori [illegible] principalem, [illegible] fidejussores [illegible] fidejussoribus 17 [illegible] fidejussor [illegible] [illegible] ll [illegible] [illegible] § [illegible] [illegible] actio, [illegible] fidejussores [illegible] tamen [illegible] [illegible] creditore [illegible] fidejussoribus, [illegible] [illegible] diminuenda est: quia [illegible] beneficio creditor [illegible] dividitur inter se [illegible] [illegible], nec [illegible] [illegible] renunciare, [illegible] renunciatio recepit [illegible] modum creditoris, [illegible] [illegible] distinguerent [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vero [illegible] modum fidejussorum [illegible] [illegible] primum solvit [illegible] [illegible] damnum obligationis, [illegible] reijcere [illegible] fidejussores, docent Noguer. d. alleg. ll nº 53. Cardinalis Tuscus practicarum [illegible] 207 nº 18. Hering. d. [illegible] part. ex nº 28 Rodr. de annuis red. lib. 2 q. 17 nº 15 [illegible] Fab. eleganter d. lib. ll cap. 14 late Clea. d. 4º 5. q. 7. [illegible] nº 6. idem dicendum [illegible] [illegible] quorum alter hoc beneficio [illegible], [illegible] apparent 47 [illegible]

[illegible]

l. [illegible] de [illegible] d. n. 29 g n. 7. [illegible] d. l. 11 [illegible] et 13. [illegible] Ubi [illegible] n. 3. [illegible] mandatory l. [illegible] 24 [illegible] n. 2 [illegible] mandatar. 4 [illegible] mandatar. [illegible] 3. [illegible] mandans [illegible] 34 [illegible] [illegible] d. t. 6. Obstaventes [illegible] immediat dicen [illegible] dicendum est in mandatoriis. Ex [illegible] dimissa alii casi

15

Ceterum vero [illegible] [illegible] [illegible] Gravi [illegible] [illegible] [illegible] [illegible] [illegible] quoniam [illegible] [illegible] Beneff. [illegible] sine lucro creditoris [illegible] [illegible] 27 [illegible] n. 27. [illegible] [illegible] [illegible] n. 30, [illegible] fidejuss. n. 324 [illegible] 322 [illegible] n. 27. [illegible] sine [illegible] limitationem [illegible] [illegible]

§ 3. De Benef. Exceptionum Quas Fidejussor Opponere Potest Ex Persona Rei Principalis

[illegible] Fidejussor [illegible] exceptioni [illegible] [illegible] 52 [illegible] [illegible] duas [illegible] Justiniani [illegible] [illegible] de [illegible] [illegible]

certiorea[illegible] dicit[illegible] licet [illegible] (et cet. ora[illegible] principalis dirigit[illegible] ad de[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] obligatus [illegible] [illegible] [illegible] [illegible] [illegible] regulariter exceptiones [illegible] fideiussori: et regulariter exceptiones personales [illegible] [illegible] accomodant[illegible] [illegible] [illegible] [illegible] 3. Ult. [illegible] exceptiones 7. § 1° ff. [illegible] 19 ff. de exceptio[illegible] ibi [illegible] defensione 11 [illegible] eodem tit.° de exceptione 32 hoc tit.° [illegible] [illegible] [illegible] [illegible] Valentinus Franc. de fidei. cap. 3 n.° 20 Hering. [illegible] 27. 4 [illegible] parte [illegible] Mauri. Arep. 2. part. principalis sect. 7 § 27 et seq. [illegible] Donel. [illegible] 22. [illegible] 3 et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] cap. 3. [illegible] 28 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 3. Ult. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tract. 4 cap. [illegible] n.° 7 [illegible] [illegible] [illegible] 2 part. cap. 30 [illegible] n.° 30,

17

Nedi[illegible] [illegible] exceptione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] adducunt auctores [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] adeo certa nec [illegible] [illegible] dicam 1° exceptio [illegible] pacti de non petendo [illegible] [illegible] [illegible] fideiussori, [illegible] [illegible] [illegible] 2 [illegible] de [illegible] 32 [illegible] [illegible] [illegible] [illegible] [illegible] 8 §. [illegible] [illegible] 7. ff. mand. [illegible] [illegible] § [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] trans. actionis [illegible] [illegible] 7. § 1° de trans. actionib. [illegible] fidejussor[illegible] [illegible] [illegible] hoc tit.° [illegible] de [illegible] [illegible] [illegible] 9 § [illegible] [illegible] [illegible] [illegible] pacto interveniente, et transactione facta [illegible] [illegible] [illegible] eadem exceptio [illegible] principali, [illegible] et [illegible] fidejussori, [illegible] [illegible] [illegible] [illegible] [illegible] aliquanto [illegible] [illegible] [illegible] de ceteris tractabo [illegible] personale [illegible] [illegible] [illegible] [illegible] faciens de non petendo a reo principali in [illegible] eius [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] fidejussori [illegible] [illegible] 22 [illegible] [illegible] § 1° de pactis: [illegible] [illegible] in casu [illegible] fidejussor [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et se interponere pactum allegando; [illegible] [illegible] fidejussor [illegible] [illegible] [illegible] habet [illegible] principa[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] fidem et [illegible] [illegible] [illegible] creditor [illegible] [illegible] Franc. [illegible] n.° 125 Hering. [illegible] 9 part. n.° 4. [illegible] [illegible] [illegible] exceptionem pacti [illegible] [illegible] [illegible] fideiussori, [illegible] [illegible] nisi donandi animo intercesserit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] principalis exceptio fidejussori [illegible] [illegible] dictu 32 de pactis. Donel. [illegible] 1° [illegible] [illegible] [illegible] [illegible] [illegible] quae exceptio dari fidejussori [illegible] [illegible] aliquam [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] regressus [illegible] creditori [illegible] [illegible] solvit, [illegible] [illegible]

fidejussori

Fidejussori qui deficiente habere et bene fructus deficere sequenti.

[illegible] julian[i] [illegible] exceptione quam [illegible] donandi animo intercesserit, [illegible] Julian. ait si fidejussor intercessit [illegible] obligaos [illegible] quare cum tota obligatio [illegible] fidejussorias [illegible] 17 [illegible] exceptione [illegible] exceptionis [illegible] 27§ [illegible] quam manente [illegible] [illegible] dicendus [illegible] exceptione [illegible] [illegible] obligos [illegible] ment. [illegible]

Exceptione [illegible]
[illegible] 27 [illegible]
[illegible] 17 [illegible]
[illegible] magnas [illegible] liberatus [illegible] licet [illegible] [illegible] exceptio [illegible] ratio [illegible] duplicat [illegible]

[illegible] pretoriis [illegible] p. 3

In [illegible] viam [illegible] mihi. ss. q [illegible] maxime [illegible] toto [illegible] q
[illegible] sacrum [illegible] nisi [illegible] nec [illegible]
[illegible] interveniat [illegible] suam [illegible] fuit [illegible]
[illegible] juris 18 [illegible] ser. [illegible]
[illegible]

50

De civili vera ac [illegible] possessione et de modis eius acquirendi et amittendi

praelectionis commentarius

A sapientissimo ingeniosissimo Dno D. Joseph Ferdinandez [illegible] in sua propria aula [illegible] tina [illegible]

[illegible] anno [illegible]

Professus.

Ìterato agredimur stili preter

ti op. Parisijs pariterq. scholastica disputa subtilez tradi-
re posses modus q. ca acquirendi et amittendi quez a primordijs tra-
here in aio i et substantia possidendi ab ipso initio possesione sedi-
ere neque aliter disquisitio hec di utilis inuestigari queri-
... . [Ctini nostrorum serunt huic ordine ut colocere ...
eo l. 1 in prio et § 1 hoctt ... ... exple q usuca-
possessione ... adiunxit ... que dependent ...
testimoniis. ideirco in hac juris ... parte ...
... erit adiuinis humanis iuris et p cipue ab ...
... calamen circumspectione ... ...
... ...iuris cognitioni ... ... deseruire. quare ...
... ... auditores ... ... intentos ...
... ... inducenda ... maxima
... ... necesse est ... ...
... ... [seruiez ... 2.] ... ...
... ... auditores ... ...
... ...
... ...
cit.

Caput 1. De naturali e primaeua poss.

... ...
... mundi ... ... Deus ... ...
... ... uniuersa terra ... ... pisces maris ...
... ... in numero ...
... Genesis c. 1. ... et sequentibus. Inde ...

[illegible] in Joanne, cuius nomen Adam, greco sermone per quatuor initiales literas significare Orientem, Occidentem, meridiem, et aquilonem, quatuor mundi plagae, cuius [illegible] sufficiebant, quoniam et de [illegible] [illegible] ut ipsi aliquid ac [illegible] errent de [illegible] dominij translatione [illegible] animose et [illegible] sic cecinit [illegible] Sanctus [illegible] animus [illegible] [illegible] lib. 1° c. 8

Ut haltimo paradisus erat mundus [illegible] in toto [illegible] gaudebant [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] diluvio restaurati Noe et eius [illegible] Genes. c. 9 [illegible] [illegible] [illegible] in [illegible] aquas [illegible] Genes. c. 10. [illegible] divise [illegible] gentes [illegible] suis. [illegible] [illegible] [illegible] hereditas indivisa, contigerat eis, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] eius hereditas [illegible] indivisa in [illegible] transmittit [illegible] judicio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] judicio [illegible] [illegible] [illegible] [illegible] clauso [illegible] 1° c. 1

2

[illegible]

[illegible] dominium [illegible] ante [illegible] [illegible] [illegible] [illegible] gentes nationes [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pro indiviso [illegible] [illegible] 25 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] inquit [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] legitim
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
aut [illegible] [illegible] [illegible] [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] 4. 17 [illegible] 18. [illegible] 21
[illegible]
[illegible]
[illegible]

[illegible]

et nemi[illegible] [illegible]

[illegible] [illegible]

[illegible] ex [illegible] [illegible] [illegible] [illegible]

[illegible] iam [illegible] ipso considendi [illegible]

[illegible] numero [illegible]

[illegible] oratio [illegible]

[illegible]

[illegible] acere [illegible] [illegible]
[illegible] ocrere [illegible]
[illegible] ducere [illegible]
[illegible]
[illegible]
[illegible]
[illegible] Jus [illegible]
et cuj ait [illegible] videlicet [illegible]
[illegible] Scien [illegible] 2
[illegible] quandiu a no [illegible]
[illegible] simul omnes [illegible] aere [illegible] ...
referentes aqua [illegible] maria [illegible]
mari [illegible] quasi [illegible] jure [illegible]
[illegible]
et de acoria [illegible] Vidaci [illegible] 11
trio [illegible], auia, [illegible]
[illegible] pro antum [illegible]
[illegible] po. Romani
[illegible] 50
[illegible] jure pro
mani [illegible] jure [illegible], maris itora, [illegible]
Cuicunque [illegible], ut agnoscunt Seid. [illegible] 1° [illegible] 14 [illegible]
[illegible] 2 [illegible] §. 9. [illegible]
[illegible] 4 [illegible] 1° [illegible]
[illegible] 2 [illegible] 1° [illegible] 1° [illegible] 10 e 1 [illegible]
in l. 1° §. [illegible] Consequenti [illegible] in itore. A
A. [illegible] in l. 1° [illegible] 1 [illegible]
[illegible]
ind. [illegible] 15. [illegible] 70 [illegible]
[illegible]

2° cart. [illegible] 110 n° 11, [illegible] 100 n° 55 [illegible]
[illegible] [illegible] pub. [illegible] 55. n° 5. adducunt [illegible] in me
[illegible] Romano in [illegible] qua in mari ipso et Cingiacenti [illegible]
[illegible] [illegible] occurrunt [illegible] maria [illegible]
[illegible] missi in ea [illegible] [illegible] ruinas [illegible]
[illegible] narrant [illegible] antiquitat. [illegible] Baronius Anno Christi 492
[illegible] [illegible] 16. [illegible] 2 [illegible] [illegible] 15 [illegible]
[illegible] antiquitatum 6. 1° [illegible] 28. [illegible] [illegible]
[illegible] [illegible]

In [illegible] [illegible] quae [illegible] Paul. [illegible]
[illegible] 1° [illegible] Domina [illegible]
[illegible] [illegible] insula in mari [illegible]
[illegible] [illegible] invenit [illegible] fiunt
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] ex jure [illegible]
[illegible] 17 [illegible]
[illegible] [illegible]
20 [illegible] 20 [illegible] 7 [illegible]
[illegible] 27 [illegible] 7 [illegible]
[illegible] de sua institutione. [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] accidendi modo [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible] civitate [illegible]

[illegible]

[illegible] Josue [illegible] civitatis [illegible] 1.
[illegible] ex [illegible] domini Josue c. 22 [illegible] 16. [illegible]
[illegible] Deuteronomii c. 20 [illegible]
[illegible]
[illegible] c. 2 [illegible] 1° [illegible]
[illegible]
[illegible] publice [illegible]
[illegible] romana [illegible]
[illegible]
[illegible] 91 [illegible] 1° [illegible]
[illegible] populo romano [illegible]
[illegible] publice vendebat [illegible]
[illegible] 9 §. 1° [illegible] §. 1° [illegible]
[illegible] 17. 20 [illegible] 2 [illegible]
[illegible]
[illegible] 20 §. 1° [illegible] iure [illegible]
[illegible] iura [illegible]
[illegible] In his [illegible] questionibus
[illegible]
[illegible] 1° [illegible]
[illegible]
[illegible]
[illegible] 2 [illegible] 1° [illegible]
[illegible] n° 17 [illegible] 2 [illegible] 7 [illegible]
[illegible] 2 [illegible] 71.

[illegible]

Insula in mari nata [illegible]
[illegible] 3. [illegible]
[illegible] insula nata [illegible] publico [illegible]
[illegible] insula [illegible]

[illegible] nel usu [illegible] toe [illegible] [illegible] Bal. lib. 2 [illegible] [illegible] 10 [illegible] [illegible] de re [illegible] tractatu de insulis ... Sobol. l. 1 tom. de ver. ind. lib. 2 [illegible] 6 ... nam tamen [illegible] [illegible] [illegible] [illegible] [illegible] quia [illegible] [illegible] [illegible] [illegible] [illegible] maris ... [illegible] albeg Selden [illegible] [illegible] lib. 1 [illegible] 10 [illegible] [illegible] [illegible] 100 [illegible] [illegible] additionibus [illegible] in medio mari [illegible] [illegible] [illegible] principii [illegible] [illegible] navigantibus [illegible] [illegible] [illegible] quoniam [illegible] ut exemplo [illegible] [illegible] [illegible] [illegible] [illegible] 2 [illegible] 2 [illegible] notabil.

11

[illegible] et [illegible] [illegible] maris [illegible] [illegible] que antea nullius [illegible] [illegible] inventori [illegible] [illegible] possessione [illegible] ut ait Paul. [illegible] [illegible] 1 [illegible] 1 [illegible] [illegible] [illegible] 3 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quia [illegible] gemma [illegible] [illegible] custodiant [illegible] [illegible] [illegible] inveniet [illegible] [illegible] inventoris [illegible] [illegible] restituendae [illegible] [illegible] [illegible] [illegible] [illegible] multi [illegible] [illegible] [illegible] [illegible] [illegible] interdum [illegible] 1 [illegible] [illegible] [illegible] Covarruvias [illegible] 2 [illegible] 1 [illegible] 1 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Joann. [illegible] lib. 2 [illegible] [illegible] 9 [illegible] [illegible] in [illegible] 1 inst. de [illegible] del. [illegible] n. 25 [illegible] [illegible] [illegible] [illegible] facienda restitutio [illegible] [illegible] [illegible] [illegible] [illegible] que extat in [illegible] [illegible] [illegible] [illegible] lib. [illegible] [illegible] [illegible] ab inventore acquiritur rei que [illegible] [illegible] fuerat [illegible] Et [illegible] inventa [illegible] [illegible] merito [illegible] haberi [illegible] nova [illegible] [illegible] ab alio [illegible]

[illegible]

[illegible] aut consilij studia et [illegible] inventa sint in [illegible] maris quos [illegible] recens [illegible] [illegible]

[illegible]

[illegible] amitti [illegible] 25 [illegible]

amitti [illegible] 17 [illegible]

13 [illegible] quamvis [illegible]

11 [illegible] notant [illegible]

de acquir. [illegible] 2. n° 25 [illegible] 20

[illegible]

[illegible] 1281°

[illegible] H°

Ex [illegible] colligitur [illegible]

[illegible]

[illegible] adnotare naa[illegible] po[illegible] [illegible] que [illegible] retinendi [illegible] huius [illegible] ait Joannes Antiquus glosator [illegible] docent [illegible] [illegible] corporali actione [illegible] Duaren. [illegible] [illegible] Hotom. [illegible] [illegible] in eo [illegible] pandectorum [illegible] [illegible]
juris [illegible] 77

Ex [illegible] facile exponi possemus [illegible] [illegible] possessio [illegible] retineri [illegible]
[illegible]
[illegible]
[illegible]

[illegible] in testimonio que [illegible] 2 [illegible]
[illegible] consequentiam [illegible] armata

15

[illegible] atq. [illegible]
[illegible] juri civili [illegible] naturalis possessionis, [illegible]
[illegible] juste, civili, et legitime [illegible] naturalis [illegible]
[illegible] possessio sit injusta [illegible] possessio [illegible]
[illegible] omni jure [illegible] adeo [illegible]
[illegible] injusta possessio [illegible] nihil [illegible] occasione [illegible]
existentia [illegible] Adriano [illegible]
[illegible] injustus [illegible] interrogatus [illegible] possideat [illegible]
[illegible] possideo nec [illegible] possessioni [illegible]
[illegible] hered. [illegible] retentionis [illegible]
[illegible] adeo ut [illegible] naturalis possess. [illegible]
[illegible] emptore [illegible] possideat [illegible]
[illegible] habet retinendae possessionis [illegible]
ut [illegible] similiter [illegible]
[illegible] 7. in medio [illegible]
[illegible] 14 lit. D. [illegible]
possessionis [illegible] retentionem [illegible] insistentia [illegible]
juris ope et adiumento. [illegible]
[illegible] iusta naturalis [illegible] iniusta [illegible] inculcatione, [illegible] ratio
[illegible] redierit [illegible]
[illegible] Hoc [illegible] quarum [illegible]
[illegible] quot. [illegible] n.° 20. [illegible]
[illegible] domino suo [illegible] acquirere possessionem, [illegible]
[illegible] possessionem [illegible] idem [illegible] naturalis
[illegible] injusta [illegible] 20. [illegible] donat. [illegible]
[illegible] possidere [illegible] civiliter [illegible]
[illegible] naturalis [illegible]
[illegible] donatio inter [illegible]

[illegible]

inter me [illegible] detinet [illegible] corporaliter [illegible] [illegible]
[illegible] possessionis donatio [illegible] et [illegible] inter [illegible]
[illegible] quare si [illegible] possideat [illegible] [illegible]
[illegible] absurdie. Docet [illegible] [illegible] [illegible]
[illegible] Lib. 2. [illegible] p. 70.

[illegible] itaque [illegible]

[illegible] qui detinetis [illegible] perdendi [illegible] [illegible] [illegible] et
[illegible] retinett [illegible] animo [illegible] [illegible] [illegible]
[illegible] possessioni ut retineretur et [illegible] minori [illegible] [illegible]
[illegible] quando [illegible] [illegible]
[illegible]
[illegible] iniusta [illegible]
[illegible]
[illegible] Mader. [illegible] 27, [illegible]
[illegible] Dei [illegible] [illegible] [illegible]
[illegible]

[illegible] nº 10, [illegible] [illegible] [illegible] [illegible] in [illegible]
[illegible] [illegible] xvi [illegible] [illegible] reddit [illegible]
[illegible] quæ [illegible] [illegible] [illegible] [illegible] quoq [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] quorum [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] minori [illegible] [illegible] [illegible] [illegible]
[illegible]

Cap. 2º De a[illegible] possess. sive modis civilibus [illegible] acqui[illegible]

[illegible] [illegible]

[illegible] [illegible] [illegible]

1.

[illegible]

Dominio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] primo introdu[illegible]
[illegible] [illegible] pauca [illegible] [illegible] [illegible] [illegible]
[illegible] ideo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] ut [illegible] [illegible] [illegible] acquisitio [illegible]
[illegible] [illegible], si animus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
corpora [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] d. 2 illustr. [illegible] 71º [illegible] [illegible] [illegible] [illegible]
[illegible] ut ad retinendam [illegible] [illegible] 1169 [illegible] in [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] l. 3. §. [illegible]
[illegible] animo [illegible] [illegible] [illegible] 7. c. 5. [illegible] [illegible] [illegible]

[illegible] Commendinas [illegible] ead. [illegible] § [illegible] aute [illegible] et [illegible]
[illegible] [illegible] sequent. l. quambis [illegible] noct. [illegible] licet [illegible]
eod. [illegible] considere [illegible] interd. [illegible] admiceotur [illegible]
[illegible] quos [illegible] mentibus [illegible] [illegible] [illegible]
quunt [illegible] tamen [illegible] ideo amitunt domini [illegible] partes [illegible]
Proc. admonuit [illegible] [illegible] caa [illegible] idem [illegible]
[illegible] pariq animo [illegible] [illegible] § [illegible] 25. [illegible]
[illegible] arm. 12 [illegible] 30 [illegible] [illegible] [illegible] sentatur
[illegible] 1° [illegible] in [illegible] monario juris [illegible] § [illegible]
[illegible] Duar. [illegible] [illegible] [illegible]
[illegible] tract. 2. [illegible] 2. [illegible] 25 [illegible] [illegible] in [illegible]
[illegible] n° [illegible] 97 [illegible] Matheus in [illegible] pandect. dig.
[illegible] n° 10 [illegible] [illegible] 10 [illegible] 2 [illegible] disp. 21 [illegible] 2 [illegible]
[illegible] [illegible] n° 12 [illegible] 13 [illegible]

[illegible]

[illegible] 97

[illegible] Caxes [illegible] occasi [illegible]

[illegible]

[illegible] 7 [illegible]

[illegible] 1102 [illegible]

[illegible] pag. 501 [illegible]

[illegible] 9

[illegible]

[illegible] 1. 7 [illegible] 50 partit [illegible]

[illegible] 7 [illegible]

[illegible] 775 [illegible] 21 [illegible] 2 [illegible]

[illegible] n° [illegible]

[illegible] 2 [illegible]

[illegible] n° 122 [illegible]

[illegible]

[illegible] adione possessi rei [illegible] actione [illegible]

[illegible] manus [illegible]

[illegible] reposita [illegible]

[illegible]

[illegible] quocumque [illegible]

[illegible] conditione [illegible]

[illegible]

[illegible] Domini [illegible] defensione [illegible] ad

[illegible] Domini [illegible]

C

11

[illegible] det[illegible]

[illegible] inter[illegible] inter[illegible]

[illegible] consideratis [illegible]

[illegible] indi[illegible] dictio [illegible]

de usucapionibus, ut [illegible] Franc. [illegible]

A. [illegible] Fab. [illegible] pragm. decad.

17 errore S. Mich. ind. [illegible] d. tract. [illegible]

[illegible] in [illegible] quadam mulier [illegible]

[illegible] Responde [illegible]

[illegible] licet mulier [illegible]

[illegible] fundum [illegible]

[illegible] Raphael [illegible]

17 [illegible]

n° 7

[illegible] in [illegible] peragit.

[illegible] possidebat [illegible] illa [illegible] vendidit [illegible] donavit [illegible] ante [illegible]

tradidisset realem [illegible] instrum. [illegible]

nomine [illegible]

solo [illegible] possidendi [illegible]

si sojiciebat p(r)ius inciviar sosidere alieno nomine 2us.
iti quirat possessiones et cuius nomine ostinuit opiitere. se. e mo
suis illa [illegible] similis [illegible] non vrebis manus neg incosuberi
[illegible] a ouleat actio illa tradendi ex. eis, e [illegible] teius transte
rrat in situs [illegible] cius rationi soetis et Distinctas epistima
runt uj. lib. 17 tiberatio. cap. 18 [illegible] ad Donel. lib. 5
cap. 10 lit. B. Vadenius [illegible] venin. inl. siquando 35 n. 5 [illegible]
[illegible] lib. 4. affram. Ant. Tom. in l. 15 Taur. n. 30 [illegible] tat.
[illegible] Javaulia. lib. 1 tit. 11 aess. 8. ho
dierno [illegible] recertissim[illegible] moiurae ut nullius gerere in rumen
tis q. clausula [illegible] n. [illegible] tineat [illegible] [illegible] pratius in praxi iae
ant. Ant Tom. tom. 2. [illegible] cap. 2. n. 20. Selio Fernan.
in l. 17 Taur. in n. 25 Greg. to leptizioi, in [illegible] 70 tit. 300r.
tit. 3. [illegible] [illegible] [illegible] tit. 23 n. 11 Larrea [illegible] Gras
natensi lo n. 1, 17 et sequentes [illegible] [illegible] [illegible]
lo [illegible] 11 n. 5. [illegible] mot jure [illegible] [illegible] [illegible] [illegible] mentio
in l. 4. [illegible] noie [illegible] hoc tt. a [illegible] [illegible] [illegible] [illegible]
ut n. sit [illegible] derestitue. poliat [illegible] [illegible] [illegible] 17 deprec n.
honibus ut [illegible] iune [illegible] [illegible] 10 Donel. [illegible] 10 [illegible]
ut n. sit audiendus si tam in l. [illegible] lo hoc tt. [illegible] novi in
commentis pragmaticorum [illegible] [illegible] neque [illegible] [illegible] [illegible]
que [illegible] [illegible] possess. trans [illegible] [illegible] [illegible] in [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
sati [illegible] necesse et ut [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Ant Tom
in d. l. 45 Taur. n. [illegible] [illegible] [illegible]
n. [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] 20 [illegible] [illegible] 69 [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

C

[illegible] 119 [illegible] 7. [illegible] addenes [illegible]

[illegible]

eas alij [illegible] et [illegible] [illegible] [illegible]

[illegible]

[illegible] 7 [illegible]

[illegible] tendubius revocat [illegible]

[illegible]

Cap.° 27 [illegible]

[illegible]

di. [illegible] 27 § 1.° [illegible] animadvers. [illegible] c. 27 [illegible]

[illegible]

[illegible] maiores. [illegible]

[illegible] 23 [illegible] l. [illegible] Jus [illegible] [illegible] 15 in [illegible]

[illegible] perfectionem [illegible] circa fructus [illegible]

[illegible] ut videram [illegible] primo

[illegible] acquisitionis n° 2 [illegible] tradat [illegible]

[illegible] n° 5. ideo [illegible] romanorum [illegible] multum [illegible]

in [illegible] docet [illegible] posse[illegible] 19 [illegible]

[illegible] qua [illegible] labore [illegible]

[illegible] potuit [illegible] corporaliter [illegible] vendere [illegible]

[illegible] tenere [illegible] nihil [illegible] necessitate bene [illegible]

[illegible] quasi [illegible] possidens ad [illegible] univers[illegible]

[illegible] 25 [illegible] in [illegible]

[illegible] 7 [illegible] 7 [illegible] variar. [illegible] 16.

n° 12 [illegible] acquirit [illegible] n° 42 [illegible] ad [illegible]

[illegible] Ant. Fab. [illegible] 15 [illegible]

Hic [illegible]

[illegible] romanorum [illegible] in acquisi

tione quae animo [illegible] dixi [illegible] tantum [illegible]

in modo acquireri [illegible] naturalis acquirit omnimodo ap

hensione retinetur [illegible] Civilis [illegible]

solo animo retinetur [illegible] acquirit [illegible]

[illegible] potentia apprehendendi [illegible] corporaliter [illegible]

[illegible] Civilis quae [illegible]

[illegible] possidere nos [illegible] possidere [illegible]

[illegible]

[illegible] ad [illegible]

superiori [illegible]

Doctrina [illegible]

liceant [illegible] maior[illegible]

[illegible]

[illegible]

consectariu[m] pri mu[m] posesio[n]

11

in [illegible] consistere.

[illegible] p[ri]mu[m] posess.

in facto consistere et tota [illegible] in facti [illegible] itaque [illegible] habeat [illegible] cogni[tio]ne[m] necess[aria]m juris [illegible] adiumentu[m]. [illegible] perinde erit [illegible] modo [illegible] hendere aute[m] [illegible] posess. qua ap[pre]hendere aut retinere [illegible] detentatione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] occasiones in facto [illegible] [illegible] accedit [illegible] maiores [illegible] in [illegible] 12 § [illegible] de captibus [illegible] retentione posess in [illegible] [illegible] distinguens [illegible] posess. [illegible] [illegible] magis [illegible] [illegible] [illegible] retinenda posess. in [illegible] [illegible] [illegible] [illegible] [illegible] 2 [illegible] [illegible] [illegible] [illegible] [illegible] posess. [illegible] 9 [illegible] 4°.

12

[illegible] et [illegible] [illegible]

[illegible]

... n° 71 ... [illegible]

... tractatu ... [illegible]

... [illegible] ...

Denique in observatis ... [illegible] ...

ind. 49 ... [illegible] ... ac

... [illegible] ...

[illegible]

[illegible] Libera [illegible]

[illegible]

[illegible] hoc [illegible]

[illegible] cogitauit [illegible]

[illegible] que [illegible] poterit [illegible]

[illegible] gratias [illegible]

[illegible] dominus [illegible]

[illegible]

Disputatio secunda

Duos candores

Posidere in vose

[illegible]

15

16

17

[illegible] de [illegible] di [illegible]
[illegible] respondet [illegible] et
[illegible] 2 [illegible]
[illegible] calcaio [illegible]
[illegible] prius [illegible] cetere [illegible]
[illegible]
[illegible] comodo [illegible]
[illegible] 17 [illegible]
[illegible]
[illegible] modo [illegible]
[illegible]

17

[illegible]
[illegible] in solido [illegible]
[illegible] pace [illegible]
[illegible]
[illegible]
[illegible] 4° [illegible]
[illegible] modo [illegible]
[illegible]
[illegible]
[illegible] 17 [illegible]
[illegible]
[illegible] la [illegible]
[illegible] onde [illegible]
[illegible] ambiguitate [illegible]
[illegible]
[illegible]
[illegible] 15 [illegible] 2 [illegible]

[illegible]

Quaestio [illegible]

Obstat lit. [illegible] Valer[illegible] dec. [illegible] n° 8 [illegible] [illegible] n° 39 [illegible] ita exponere [illegible] Pont. Gomet. in l. [illegible] Jaur. n° 178 [illegible] dec. [illegible] [illegible] remedio [illegible] n° 714.

n° 19

Decepti [illegible] [illegible] [illegible] 3. 8. ex [illegible] et [illegible] Bart. n° 8 et 10 Alexander n° 2. 8 et 30 Jason n° 41 et 60 Duaren. et Pisan. n° 55 Alciat. in l. 1. [illegible] n° 61 Gomet. in l. [illegible] n° 100 Jachin [illegible] [illegible] existimarunt posse duos in solidum possidere alterum juste, injuste alterum; [illegible] antiquorum doctrinam [illegible] Pontifex [illegible] [illegible] [illegible] [illegible] [illegible] possidetis [illegible] [illegible] [illegible] et asserere duos simul eandem eodem modo in solidum possidere non posse. [illegible] docuit [illegible] in [illegible] julian. in d. l. duo [illegible] [illegible] [illegible] [illegible] [illegible] in d. l. si duo 3. [illegible] si [illegible] [illegible] justo [illegible] injuste possideat ambo manu tenendi sint in possessione [illegible] [illegible] [illegible] possidetis ita possideatis. [illegible] [illegible] justas civili [illegible] titulatas [illegible] [illegible] [illegible] [illegible] [illegible] Princip. [illegible] [illegible] possidetis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] de privilegiis in [illegible] quam doctrinam illustrant [illegible] [illegible] [illegible] [illegible] Bart. in collectaneis ad dictum [illegible] [illegible] 1 [illegible] novissime [illegible] tom. in additionibus [illegible] collectaneis.

n° 20

[illegible] [illegible] auctores moveri debuerunt alium [illegible] [illegible] [illegible] duos simul eandem rem in solidum possidere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] dirigendus e dote [illegible] ab l. [illegible]
[illegible] totalis [illegible]
accipiendus e a [illegible] si in [illegible]
[illegible] reddare [illegible] possideant [illegible] habeant
[illegible] [illegible] possit [illegible]
[illegible] [illegible] Fab. [illegible]
[illegible] lib [illegible]
[illegible] expositione [illegible]
[illegible] [illegible] col. [illegible]
[illegible] [illegible]
[illegible] [illegible] duos
[illegible] decreto [illegible]
[illegible] decreto [illegible]
[illegible] Ambo insolidum [illegible]
[illegible] observat [illegible]
[illegible] [illegible]
[illegible] [illegible] de pignoribus [illegible]
[illegible] [illegible] aequale [illegible]
[illegible] substantia [illegible] aequalitate obligationis
[illegible] individuae [illegible]
[illegible] [illegible] insolidum [illegible]
[illegible] [illegible] pignoribus [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] Valismmo

[illegible] [illegible]
licio [illegible] superiori [illegible]
Differret nullus [illegible] ut [illegible]
[illegible] possideri [illegible]

N° 21

[illegible] trahere [illegible]
[illegible]
[illegible] obligatio in duobus [illegible]
[illegible]
[illegible]
[illegible] de rebus corp. [illegible]
[illegible] consideravi [illegible]
[illegible]
[illegible] procul dubio [illegible]
[illegible] auctores [illegible]
[illegible] tamen [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

Consectariu tertiu captibu posidere non posse

22

[illegible]

Et fratri gonem

[illegible] 2. [illegible] de [illegible] ... [illegible] ... et tavola

[illegible] ... acquirere et retinere posset. et

[illegible] ... [illegible] ...

[illegible] ... accedere ... [illegible] ...

[illegible] ... 23. § [illegible]

[illegible] ... [illegible] ...

de certis [illegible] ... [illegible] ...

habiles [illegible] ... acquisitum posset. [illegible] ...

[illegible] ... [illegible] ...

[illegible] ... ex causa peculiari ut dicit in glo. ...

[illegible] 4 [illegible] ... [illegible] ...

in [illegible] de [illegible] ... in l. 12 § [illegible] ...

22 [illegible] peculiarii ... [illegible] ...

[illegible] ... [illegible] ...

in [illegible] ... 16 ... 17 ... in

jurisprudentia ... principiis ... [illegible] ...

[illegible] 309 [illegible]

N° 23

Quae [illegible] ... [illegible] ...

[illegible] ... habere

[illegible] ... actione ... [illegible] ...

[illegible] ... [illegible] ...

[illegible] ... dominus ... [illegible] ...

debat ut cetera ... in l. [illegible] 12 § [illegible] ...

[illegible] ... [illegible] ...

[illegible] ... acquisivit ... [illegible] ...

[illegible] ... [illegible] ...

[illegible] ... ex delicto ... exemplo

[illegible] ... in l. 4 § 1 et legatarii et [illegible] ...

[illegible] ... 47 ... et exemplo ... in

[illegible] 35 de [illegible] ... [illegible] ...

[illegible]

furti po aut ... tempi ..., na ... ego ... no cu adepti ... In Casu ... Tarui ... dominij ... ... retinet ... ex ... apud ... de acquir. ... Excellentissimus ... Doctrina Dominus Chamaxero ... dicit ... n. ...

de eius ... potest ... ... illa ... subducta ... ... de ... actione ... et ... interque ... inter ... in ... doctrina ... in ... de ... n. 2 n° 70. ... ... habet ... in ... ... de ... ... 1° ... ad ... in ... ...

Conectarium quartum de Hereditate

Sequimur

ex ... doctrina hereditatem jacentem ... ... hereditario ... in ... ... in ... ... in ... habet ... ... in ... ... hereditaria ... ... Crimine expilate hereditatis ... 2 ... 14 ... 7 ... ... Chum. inselecti ... ... 2 ... n. 11 ... 3. ... Almaia lib. 2 observationum ... ... hereditatem ... ... hereditate ...

pius

[illegible] reali [illegible] qualis [illegible] possess° cum in hereditate [illegible] pro [illegible] hereditate iacente [illegible], immo [illegible] in [illegible] 23 [illegible] [illegible] hereditatem iacentem [illegible] antequam [illegible] addeat [illegible] maiores [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] possess. [illegible] [illegible] [illegible] [illegible] 20 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 12 [illegible] 20 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 16 [illegible] [illegible] 40 § 1° [illegible] 44 [illegible]

Declaratum S. Officii

Fore ut vera posess° transmittatur ad heredes etiam ex sola existentia [illegible]

15

E

25

Diximus § e cuius dicti nullam l. civili efficere ut hereditas transferatur in quemcunque heredem ex sola aditione aut existentia, ob id juris DD. Romani substantiam posessionis aperiunt et colaverunt negaverunt in heredes posessionem transmitti posse. l. cum heredes ibi hoc est ... heredis maxime suspiciunt existere infantes immo posthumi, furiosi, amentes, et infantes: et hujusmodi judicii et affectu exigenti in eos deficit; quia potentia possidendi. Rursus respondeo ... et in loco separato ad vias poterunt accedere ... magis maturius perpensa hanc sententiam veriore judico quam ... Bald. in l. f. C. ... de leg. n. 1. ... 12 Pauli ... 30. ... 3. hoc ... 22. Valenz. de ... hered. ... 1A ... in ... § ... n. 3. ... tamen ... effici ... lege civili, ut ... heredes ... trans ... quoad ... effectus, ... subtilioris disputationis, ... Donel. ... cap. ... tit. ... esse ... quinimo ... facere ... corporali posessione ... persona ut sit habilis ad possidendum corporaliter et capax affectus ... communicare seu ... ut ... vero ... societate ... credito ... intervenire. Socius ... capax fuit ... ad possidendum ... Fab. ... ad ... introducant ... et ... 2. ... 33. et 34. ... 16 ...

Fran.

transeun[t] [illegible] indicij [illegible]

[illegible] oratione

[illegible] in 3. [illegible] 4°. n°1.

[illegible] 1a [illegible] 4°. n°1.

[illegible]

[illegible] nocte

Sacrariu[m] 6. [illegible]
ta quisda[m] [illegible]
Omnibus [illegible]
Reo [illegible]

[illegible]

[illegible]

[illegible] ad [illegible] [illegible]

[illegible] 25 [illegible]

[illegible] 145 [illegible]

[illegible] 37 [illegible] 35 [illegible]

[illegible] 57 [illegible]

[illegible] 145 [illegible]

[illegible] 7 [illegible] 5 [illegible]

[illegible] 28 [illegible]

[illegible] 7 [illegible] 5 [illegible] 2 [illegible]

[illegible] 57 [illegible] 25 [illegible]

[illegible] 25 [illegible] 5 [illegible]

[illegible] 27 [illegible] 12 [illegible]

[illegible] considerandum [illegible] ex [illegible] in [illegible]
[illegible] ad [illegible] cedere [illegible]
[illegible] in [illegible]
[illegible] in [illegible]
[illegible] subiciunt [illegible]
[illegible] adducta a [illegible] dicto [illegible]
[illegible] circa [illegible]
[illegible] 13 [illegible] 12 n. 10 [illegible]
magis [illegible] sententia [illegible] tom. [illegible] 45 aur. n. 111.
[illegible] praedicta [illegible] impugnare [illegible] de [illegible] trans
[illegible] in successore maioratus [illegible]
[illegible] quaerere, [illegible]
[illegible]
[illegible] revocata sit

Idem tenent [illegible] 144 [illegible]

[illegible] ratio [illegible] modo [illegible] ita ut
post [illegible] acquirant, [illegible]
[illegible] dominio [illegible]
lex [illegible] quod [illegible] § C. [illegible] deliberationibus [illegible]
[illegible] dominio
transferendo. [illegible] positione [illegible]
[illegible]
[illegible] titulus [illegible] imo [illegible]
[illegible] in loco [illegible]
[illegible]
[illegible] 1° [illegible] Cap. 11 n. 5. [illegible]
[illegible]
[illegible] Capua [illegible]

70

...ra erit d. Ro. [illegible] Suar. int. quos ingrediendos [illegible]
[illegible] regni q. 8 n. 1. e Vegae 19 n. 3. e 4 [illegible]
[illegible] Ao Faur. n. 28 Gr. a. [illegible] l. 7. [illegible] 3. [illegible]
prim. lib. 1. c. 19 n. 10 e lib. 3. c. 12 n. 3. [illegible] a [illegible]
[illegible] 2 tom. disp. 315. [illegible] quoad. [illegible]
[illegible] generaliter [illegible] ut agnoverunt [illegible]
[illegible] proxime. [illegible] indicare. =

— [illegible] examinate omittimus [illegible] longe melius =
— Examinant [illegible] =
— [illegible] 15 [illegible] =
— [illegible] intra [illegible] =
— [illegible] a [illegible] =
— [illegible] 1. par. 10 =
— [illegible] =
— [illegible] =
— [illegible] ad. =
— [illegible] =
— [illegible] =

Cp. 3. ponitur, et exponitur Definitio posessionis et eius occasione agitur de acquirenda posesse

3 De personis quae possident et per quas [illegible]

[illegible]

[illegible] ... nascantur. Nec definitio [illegible]

[illegible] ... substantia [illegible]

Hic [illegible] definitionibus [illegible]

[illegible]

[illegible]

[illegible] die [illegible]

[illegible]

[illegible] Theodorit [illegible]
[illegible] Benedictus [illegible]
[illegible] noct. [illegible]
[illegible] laudati [illegible]
[illegible] rei [illegible] iuridice [illegible]
[illegible] ad [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] dominii [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] omnia [illegible]
[illegible]
[illegible]
[illegible] rei [illegible]
[illegible] primo [illegible]
[illegible]
[illegible] nec [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

[illegible]

[illegible] 101

[illegible] loco [illegible]

[illegible] detinendi [illegible]

[illegible] 1. 1. [illegible] 1. 60. 1. [illegible]

[illegible] 2. [illegible]

[illegible] 18. [illegible] 5. [illegible]

[illegible] de domini, co[illegible] [illegible]
[illegible] [illegible]
[illegible] luuans 13 [illegible]
[illegible] in naoeri [illegible]
[illegible] paidari, [illegible]
[illegible] modi[illegible] [illegible]
[illegible] 21 [illegible]

[illegible] amitiae [illegible]
[illegible]
naoere [illegible]
[illegible] paidae [illegible]
[illegible]
[illegible] Spiritus [illegible]
[illegible]
[illegible] Dominus [illegible]
[illegible]
[illegible] Eucario [illegible]
[illegible]

[illegible] impositione [illegible]
[illegible]

[illegible] primeat [illegible] mer roma [illegible] parin [illegible]
[illegible] amin [illegible] [illegible] [illegible] 1.5. [illegible] gerent [illegible] g. [illegible]
17 [illegible] q. [illegible] de [illegible] docem
[illegible] n. [illegible] tab. [illegible]
[illegible] an. 7 [illegible] 18 [illegible] 24 extrad.
7 [illegible] de nov. [illegible] [illegible]
12. [illegible] [illegible] nol.
[illegible] 7. [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] 21 [illegible] [illegible]

Consectarium 1.

De Commodatario

Ille, [illegible] 1. [illegible]

[illegible] Commodatarium [illegible] [illegible]
[illegible] 22 [illegible] [illegible]
[illegible] [illegible]
[illegible] l. 5. [illegible] l. [illegible] l. [illegible]
[illegible] [illegible]
l. 3. [illegible] hoc [illegible] l. 1. [illegible] 33. [illegible]
[illegible] rei [illegible]
20. [illegible] hoc &c.

Consectarium 2.

De Conductore

[illegible] Conductore
[illegible] locatori. [illegible]

2 Locari ... reo derelicti, qua ... dicitur ... ... in ... l. 1. C. ... 12 ... ... Diecgregu ... ut in possidea. ... circa deserciones rei nullius ... habet ... ... 33 ... ... l. ... 9 ... ... 1 ... 7 ... 11 ... 1. 3. 5 ... 4 ... ... 16 ... ... 1 ... 10 ... 10 ... 19 ... 21 ... 10 ... 33. ... 1. 23 ... ... 11 ... ... 11 ... 10 ... ... 2 ... ... 77 ... 37 ... 20 ... ... 1 ... 50 ... 1 ... 9 ... 12 ... 23 ... 1 ... 10 ... 11 ... 3 ... 1 ... 22 ... 1 ... 19 ... Causa Domini ... 95 ... 1. 1. ... 12 ... 1. 1. ... 3. 1. 1. ... Doarte Kall ... n. 7 et 13. n. 12 Didacus Brito ... 1 ... 10 et 11 ... optime ... empt. ... maxime n. 5. 9 ...

[illegible]

Ad Inadlinocus [illegible]

errorib. antiquoru. recte censet, Cuj. lib. 2. ob. lic ad Edict. in l. id. ff. 4 [illegible] vind. Sifor. incl. naturaliter 2 n. 13 [illegible] in locatore ad longum tempus transferri posset. Et recte expensa iducie doctrina nri [illegible] in summa n. 283. in ft. ac inter [illegible] l. 2 illud. tract 1. [illegible] n. 1 [illegible] [illegible] [illegible] 2 [illegible] 138 [illegible] in hoc [illegible] licite [illegible] iure [illegible] habet [illegible] legati emphiteusis aut [illegible] idem [illegible] emphiteuticariis qui [illegible] [illegible] [illegible] similitudine [illegible] adeo [illegible] de locat. et [illegible] multa et multis adducit [illegible]

Credia in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 1. [illegible] locatio [illegible] [illegible] [illegible] [illegible] [illegible] 98 [illegible] [illegible] [illegible] in [illegible] 28 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] 37 [illegible] [illegible] 45 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

accipiens, transeat ad [illegible] aliter [illegible] in l.
3. [illegible] ff. [illegible] ultimum 28 [illegible] nocte [illegible]
[illegible] ducente posse maxime, quando [illegible]
[illegible] deductione pertinet, [illegible] admittat in re [illegible]
poterit [illegible] decentatore ad [illegible]
rio [illegible] in l. [illegible] 14 [illegible] et decretum
in l. [illegible] § incendi [illegible] et licet anti
quiores [illegible] Bartol. [illegible] 28 [illegible] impugnare [illegible]
[illegible] et simil. [illegible] ego [illegible]
[illegible] potes [illegible] ad [illegible]
[illegible] potuerit deducere ad [illegible] tandem ad [illegible]
[illegible] eleganti [illegible] 10 [illegible]
nocte, [illegible]
[illegible] ad [illegible]
ad [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] transferre de [illegible]
[illegible]
[illegible] ita ingenue fateor [illegible]
[illegible]
[illegible]
[illegible]
[illegible] 48 [illegible]

Sectarum 3. Deccog

= Precario [illegible] =

N° 77

110

[illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] 3 [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] arti 10. n° 2 [illegible]
[illegible] de Jason n° 9. [illegible] [illegible] [illegible]
[illegible] [illegible] Tab. de Error. [illegible] [illegible] 77 [illegible] 7
[illegible] [illegible] [illegible] [illegible] 10. [illegible] [illegible] [illegible]
[illegible] 2. [illegible] [illegible] [illegible] [illegible] 21°
[illegible] 13. [illegible] [illegible] [illegible]
16. de [illegible], quaeris [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] n° 2. [illegible] [illegible]
[illegible] 3. [illegible] [illegible] 1° [illegible] 2 [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] 1 [illegible]
[illegible] [illegible] [illegible] pertinent [illegible] [illegible] [illegible]
10 § 1°. [illegible] 10 § [illegible] [illegible]. [illegible] 35 § [illegible]
de [illegible] [illegible] § [illegible] 2 [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] 2 [illegible] 3. [illegible]
ad 23 [illegible] positione [illegible] [illegible] [illegible] [illegible]
[illegible] alii plurimi [illegible] 17 ff. [illegible]
l. [illegible] fundus 12 ff. quae [illegible] servit amit. l. [illegible] 7.
§ [illegible] [illegible] [illegible] 1. [illegible] 27 [illegible]
35 [illegible] arte 10 § 1 [illegible] [illegible]
21 [illegible] § [illegible] [illegible] 18 [illegible] [illegible]
[illegible] [illegible] 31 § [illegible] de [illegible] 1. ff. [illegible] 14.
de [illegible] [illegible] 1° § [illegible] [illegible] [illegible]
[illegible] 11 § [illegible] 12 [illegible] [illegible] 2 § [illegible]
[illegible] 11 [illegible] 3. C. [illegible] [illegible] empt [illegible]
[illegible] 13 § [illegible] 20 [illegible]
empt. [illegible] [illegible] [illegible] 2.

2

Similiter

exposuit ... qui per ea venditione aut alia justa titulo tradidere per ... aut rogavit ... recipi ... ipsi ... tanquam ... rogaret ... si ... retenere ... possidere ... restitueret ... nihil ... possit ... transferre ... Sig. ... hoc ... et ...

8

P. ... ejus ... rogavit ... rotanda ... legitima et a jure ... republica ... inter ... solidum ... ejus domini ... permanet ... durat quando ... posset ... in ... juris ... et ... animadvertit ... translatum ... notavit ... tamen ... restituit ...

certis et utrumque tempus de Vacatione [illegible] in [illegible] ... [illegible] ... acceptione [illegible] ... quinimo licet [illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible] ... Creditoribus [illegible] ... ut [illegible] judicio docent Bartol. [illegible] Alex. et Jason [illegible] [illegible]

Disceptatio 4ª De Depositario et Sequestro

n° 11

Sub eade. dict.° explican
da est [illegible] ... [illegible] depositarius [illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible] ... Matthaeus in collegio [illegible] ... [illegible] ... Sequestres [illegible] S. Angelus

lo. 2a noctis rachearis Co. 10. abcadis deribat dicitur and
not fil. in l. 1° & 2. part. 5, in summa sequestr. depo
sitarius e ue s'es agnosceum, utrique enim tantum custodia
rei incumbit, et cetera, quia admodum depositarius
non possidet l. licet ult. § 1° ff depositi. l. videamus 35
§. vorstes ff de usur. l. sire. t. hoc. ff. l. stipulatio 55
§ Andre. § . de V. O. ?c. nec possidet sequester l. inuit
39 l. hoc ff. nisi specialiter aliquid ? ut sequesteri l. dispo
nat potestas ipsa in possidere apud aliquem ? ?
? d. l. 39, ex qua distinctione accipienda est pars
distincta doctrina ? in d. l. ult. § 1° ut docuimus
sta in ? examinata ? ? possideba ? ? ?
n° 5 multos refert Barb. Duaren. lib. 3. de pariis ?
ministerij. Co. 10. ? lib 9 obs. erb. C. 33. ? ? in
l. 39 ? ? lib. 5 ? 13. ? ? lit. C. e ?
Amaia in l. 2. C. de decurionibus n° 10, nec ? ?
recipiendum est sequestrum possidere ut contrariare ?
? § porrea n° 22 Castillo. lib. ? ? n° 10
C. 8 n° 21 Petrus, ? tom. 2 de jus. ? ? ?
5 23 n° 4 quinimo nec ? ? in distincte ?
? sequestrius potestas ? transferri ? ?
? juxta ? potestas sequestri, licet ? ?
? placuerit quos laudat Barb. ? ?
? ? Richard ? ? ? ?
? diutius immoramur ? ? ?

Dsectarium quintum: De usufructuario

Extraa iniest.

Sequimur 5° epeoles

prio, usufructuariu non possidere ... in l. naa liber 12 no. tt. ubi ... usufructuariu naa liter possidere ... ad insistentia corporales ... in re aliena ... Quamvis a ... ex ... in l. sciendum 15 §. 1° ... in l. ... Pomponius 12c . ... Ibi ... in l. Celsus 15 §. 1° cod. tt. ... usufructuariu neque ... ex ... in l. 1a. ... §. 1. permisceri 52 hoc tt. l. acquiramus 10 §. ... 1° ... in l. ... §. ... 17 ... l. 1° ... §. 1° ... l. ... §. 1 ... 2 ... Pomponius ... 25 ... reqra ... 2 ... possessionem ... Domino ... arboribus 12 ... Pomponius 29 ... 79 mod. ... usufructuariu ... 21 §. ... hoc tt. ... usufructuariu non possidet. Docet ... in d. l. naa liter 12 ...

lib. observationum cap. 33 et 12 ... 24 Connanus in Commentariorum ... 10. Donel. in l. sigi n.º 3 C. Indemnitas inroali ad leges Celsus ... §. 1.º ad exibendum Thesaurus ... 2 selectarum disp. 21 lexi ... lib. 1.º ... tractatu 2 cap. 2 n.º 53 ... lib. 2 observationum cap. 7 n.º 31 et 32 Alvarus Valasquez de jur. emphiteutico q. 18 n.º ... et 7, y reddit varias et elegantes ... 1.ª ... usufructuarius ... de usufruct. ... detineat illa ... domini ... habeat ... ususfructuarius possidet, ... antiquiores ... ipse ... ususfructuarius naturaliter possidere et proprietarius civiliter, peccat graviter ... quoad ... eodem tempore residere ... Ususfructuarius corporaliter ... retinere et proprietarius ... possidere ... ministerio ut agnovit Valascus ... doctrina ... Duaren. in l. 1.ª § ... da remedio l.º ... 72 Benedictus ... 2 selectarum cap. 9 n.º 79 ... antiquioribus ...

n.º 13

igitur hanc ... explicemus distinguendum ... ususfructu id est a jure percipiendi fructus ... ususfructuarius ... retinet possidet ... possidet ... fructus ... proprio nomine, ideoque ... ususfructus dicitur in l. ... 15 § ... 8. ... notant ... lib. ...

S. § Dominium, [illegible] in l. 1a C. de bonis mat.
2. [illegible] n° 2. [illegible] [illegible] animadversionum n° 9
[illegible] denotantes ius dominio [illegible] primo [illegible] habet in [illegible]
[illegible] quasi potest. cum [illegible] l. 10 [illegible] [illegible] 10 [illegible]
[illegible] p. 17, quamquam actione in rem habet ad
[illegible] [illegible] [illegible] l. [illegible] 23 [illegible]
[illegible] causis mai. l. 1a si [illegible] petat. [illegible] rationem
ad exibendum quae est praeparatoria. l. 25 [illegible]
§. [illegible] [illegible] potest quae
[illegible] [illegible] [illegible]
[illegible] fide [illegible] l. 1 § [illegible]
[illegible] l. [illegible] ff. [illegible]
l. 1a de [illegible] [illegible] n° 10.

Refutatio superio-ris principij

Quod Dominium [illegible] [illegible] [illegible], neminem possidere nisi
rei insistat [illegible] sibi [illegible] [illegible]
hac argumentatione. Creditor possidet [illegible] iure
pignoris. [illegible] creditor [illegible] alienare [illegible]
est sive qui alieno nomine [illegible] creditor
rem possidere [illegible] [illegible] [illegible] quem
quae l. 13 § [illegible] de publiciana. ibi, [illegible] pignoratitia, et
[illegible] potest [illegible] l. si [illegible] § 1° de novalibus ibi
[illegible] l. [illegible] [illegible] de [illegible] [illegible] ubi
Creditor [illegible] [illegible] [illegible] [illegible]
quae solidatio [illegible], [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] l. 2 de [illegible] [illegible] [illegible]

n° 14

heredibus 28. ff. leg. et sorti 57 de pignoraticia act., ubi
docemus debitorem n. posse lere nisi soluto a creditore roget
pignoris gratia 1. 1. reg. 29 eod. tit. ff. Ridelicet 59 ad. Tr.
Trebell. Expendique post ea Valgariter ... in genere 88. de
acquir. heredit. ubi ita hereditati ... defuncti pignori
rem retinuit, ... qualis fuit in hereditate, ...
et persona ficta ... possidere ...
... dixi ... in ... decano ... pignorate, proprias ... a ... hereditate jacente
... propria, ... docent ... in l. per
servos 37 de acquir. rer. dom. ... 15 ... pupi-
lli 36. ... hoc tit. ... 6. ... debitor ...
l. de acquir. ... de diuers. et temp. prescrip. ...
... solidi ... hunc ... tract. ... 11
... multis quos ... 12 ...
... Math. in collegio pandect. disp. 28 ... 21 ...
... judicibus ... amplissime ...
Ramus in 23 juris ... tractatus.

15.

... aperit ...
... creditores ...
... manifeste ... indigeat ...
... pignus ...
15 ... immo ... jure habet creditor ...
... medietarius, possessuarius, ...
... creditor ... pignoratae ...
... pignore 22. ...
... voluntate ...
... de oblig. ...
... possidere ...

... quamvis

violatio hec gloriose anti[illegible] adeo [illegible] in difficilis est ex istimandum Creditorem non possidere rem ibi pignoratam [illegible] in questu habeo eum possidere vere et proprie [illegible] [illegible] [illegible] rem esse alienam [illegible] non possideo [illegible] [illegible] justi [illegible] possideant dicere non possidere [illegible] l. 3. § ex [illegible] hoc tit. quia [illegible] rem esse alienam [illegible] habere animum illa sibi retinendi [illegible] ad possidendum [illegible] [illegible] necessarius [illegible] animus dominandi [illegible] animus [illegible] [illegible] rem sibi, nam [illegible] dominium non est, neque [illegible] [illegible] dominium ut possidere modo jure proprio et [illegible] retinendi sibi rem detineat ut dixi sup. n° 8. taliter [illegible] creditor [illegible] rem non [illegible] et tamen jure civili possessor [illegible] [illegible] Julian in l. [illegible] que 13 § 1° de publiciana [illegible] 22 § 1° de noxalibus actionibus [illegible] possessio hoc tit.

17.

[illegible] [illegible] indagare [illegible] [illegible] [illegible] possideant [illegible] rei permittit [illegible] Creditor [illegible] [illegible] rei pignoratae [illegible] quoniam [illegible] creditor habere animum possidendi, et ceteros non [illegible] [illegible] [illegible] querimus, [illegible] indagamus [illegible] creditor habeat animum possidendi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex [illegible] pignoris [illegible] rei traditione [illegible] l. si rem alienam [illegible] § [illegible] 2. de pignoraticia act. l. 1a § [illegible] [illegible] § creditor 4 inst. [illegible] [illegible] l. 20 c. 21 [illegible] [illegible] [illegible] actionem [illegible] persequendi [illegible] a quocumque [illegible] [illegible] quomodo [illegible] [illegible] quo creditor ut

possessor res restituere, et tota pecunia debita exsoluta ... l. vnde 16. § in vindicat. de pignoribus l. pignoris ... l. si ... l. distrahi 14. § ... 18 C. eod. tit. l. 2 ... quia ... reddidoris debitoris l. si debitor 12 ... de distr. pignorum, ideo quod res pignori subiecta alienari licite alienari cum sua causa id est cum ... pignoris ut ea possit creditor persequi a quocunque l. debitor 15 C. de pignoribus l. 1 ... l. iusto 14 § ... mutat ... l. 15 pignoris 10 ... de distract. pignorum, ita ut iure ... in arbitrio erat creditoris pignoris potest ... agere aut ... actione ex ... debitorem ... pignus ... actione reali ... l. ... 14 de pign. ... de Oblig. et actionibus ... ne ... ... animaduerto hoc in ... pignoribus ... reddictor ... inquietare tertios ... pignorum neque ... ex ... in bonis ... auth. hodie ... de ob. et act. auth. hoc ita ... pignoribus l. 14 C. ... animaduerto ... ignorentis ... obliq. pignoris ... facta ... arbitrio ... personali ... ... reuocatur in ... alienationem ... possessorem tanquam ... alienato ... l. si creditor 7. § quaerit 2. ff. de distract. pignorum, quae doctrina ... recentissima ... [illegible]

pag. 11 et 13.

n.° 46. in l.° de actionibus et lanes in manuductionibus ad praxim 2.a part. 3. 2 cap. n.° 13 mad[illegible] Valenz. ad tit.3 delegatis tractatu 2 n.° 33 [illegible] alleg. 3. n. 10. Salgad. de regia prot. 4 part. c. 8. n.° 190 et novissime in alexan[illegible] 1.a part. cap. 38 n.° 8, et ... et ex n.° 40, Germanilla in l. 93. per [illegible] ubi tit.° 1 matrit. 7. pa 4. cap. 4. fere per totum, Castelval de jud. 2 tom. lib. 1° tit.° 5. disp. 11 exp. ... in quarum ... n.° ... in ... dignitate, [illegible] errorib. pragmaticorum [illegible] 81 errore 2 e 4.

lib. 4. ( ) 1 [illegible]

Hipotecaria ergo breviter dicendum est ... tenens ... naliter, id est manente de periculo ... nec eius ... traditio ... n.° 18 designare 2. ... ... in ... proprie designare ... ad L. juris 41 §. si mutui de Praecaptionibus. 3. et ... n.° 7. in ... de actionibus. et ... differentiis ... secundum ... antiquis et ... scilicet. ind. ... propria ... de contractibus l. part. ... tractatu ... cap. 2. ... n.° ... n.° 4. ... de pignoribus ... Alias ... Gentili ... 238 ... de ... 35 ... in ... serbiana ex n.° 35. de actionibus ... ... et alia ... ... alio modo ... ... n.° 17. ... ... serbiana ...

[illegible]

[illegible] per [illegible] dicit [illegible] [illegible] Lara [illegible] n. 25. [illegible] Barb. [illegible] in l. [illegible] [illegible] ante n. 10 [illegible] in 15 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 10 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 3. [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de [illegible] Sententia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Sententiam [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in l. [illegible] n.° 4 [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] 15 et 16 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 2 n. 1° [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

pot[est] quia plurium ab eorum bonis eo quo in apotheca intro

l[oca]sit actionem realem ut alii juri civili videri videbitur dge

rebat, cum venio ginorum [illegible]. 5 Quibus faveret

actionis [illegible] Urgent coguntur et [illegible]

[illegible] remanet actioni realis

[illegible] nisi [illegible] in l. Imum 7. Sinceres 12

[illegible] dividi [illegible] et [illegible] actione re[alis]

[illegible] [illegible] 27 [illegible]

tractare 6 14. Quod magis [illegible] [illegible]

[illegible] ingenii juris et [illegible]

per decad. 74 et 75 decernit [illegible]

[illegible] tigore, et fine [illegible]

actio realis [illegible] acumen [illegible]

angustis [illegible] liberabit.

19

[illegible]

usque facile [illegible] quare. Creditor [illegible]

et [illegible] in [illegible] [illegible]

et [illegible] persequi [illegible] actio realis de cuius

ut creditori [illegible] Casar [illegible]

27 de [illegible] [illegible]

[illegible] [illegible] creditor [illegible]

[illegible] in [illegible] [illegible] judicis [illegible]

Baldum [illegible] 14 [illegible]

[illegible] alicuius juri [illegible]

[illegible] [illegible] Dominus [illegible]

[illegible] Baldum [illegible]

[illegible] [illegible]

[illegible] agere [illegible]

[illegible] [illegible] [illegible]

[illegible] Doctores, Immo [illegible] [illegible]

in d. lucri c[essan]tis vide... ... ...
... ... duas iam remedia in re ...
quae illi ... ... tertio possessore si lectis ...
... quae ... ... actione in
... ...
... ...
... ...
... ...
... ...
... ...
... ...
... Locat. notante ... traitat. ...
117. ... ...
... ...
... ...
... ...
in 3.us possessor... ... ...
... transferat ... ...
... ... in principio
... ... notane domi...
... Pich. ... ... 12 n.° 12 ...
... ...
de Locato 2.a parte § 5 n.° 7, ...
... Gom. 2.o tom. Variar. c. 17 n.° 21 ...
adducit ... ... additionat
... ...
... ... ponde
re ... ...
... ...
... transfertur possessio.

Tractatus

20.	111

... ut ingrediamur quaestionem ... creditor ... Baldum ... dominus ... remedii ... dominium ... possessor ... creditor ...

21

... creditoris ... possessori ... ad exib. ... Domini ... dominio, possessor ...

[illegible], [illegible] pignoratiu[illegible], et [illegible]
[illegible] possibile [illegible] tendit [illegible]. [illegible]
[illegible] creditore [illegible]. Vendere pro pignori[illegible]
[illegible] adat l. l. [illegible] autem quem
[illegible] g. d. [illegible] sibi [illegible] pignoratam affirmet
re [illegible] creditore [illegible] decidenda [illegible], Cui[illegible]
[illegible] pignoratitio creditore
cui res traditur: alio modo nec [illegible] subtilite[illegible], [illegible]
[illegible] indicat[illegible] adeundum. 2° Opponitur
[illegible] l. [illegible] l. seq. eod. tit. [illegible]
ac actione ad exibendum adversus quemcumque
[illegible] possibilitur. l. et quia naturali[illegible]
[illegible] possidet. denique inquit Creditorem pignoris
[illegible] recepit ad exibendum teneri [illegible]
[illegible] Paul. in l. seq. [illegible]
[illegible] notitia. [illegible]
[illegible] creditur [illegible] naturaliter [illegible]
[illegible]
[illegible] pignoratitio [illegible]
naturaliter [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] 2° [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

fuerit tradita pignori accepta siue tradita
sub d° pignore, siue post ejus acceptationem redinuat no
jus suum casu amitterit

a. Ex his apparet Creditorem
posidere rem sibi pignoratam tum ciuiliter quam naturaliter
idem fore et in rebus quas debitor inserit ingenitis quae
eod. tempore possessio penes duos esse non potest l. 3. § ex
contrario poss. nisi tamen ipse debitor modo posse
sionis precario quamuis in rei clarat. l° Cat. 7 in
ceperit possidere et nec a lituo tempus usucaperet
debito ergo tempore suo possessio possessio Creditoris
finito jure pignoris l. Seruii 16. §. Filio 3 accepit ex
Mucian. Quinimo si ante luitionem pignoris idem
ait. Vel ita capiendi tempus, per possessionem Creditoris
usucapit d. nisi lex 33. § vi pignori 4. eod. 4° et
quo legi usucapio, et licet sine Magnus Cre
ditoris possessio lect. Accurse docet Julian. in l. si
pignoris 36. nec et° juncta l. 4. de usucap. sunt
sensu habet C. in d. l. seruii 16 de usucap. Qui
docet debitorem possidere in quo ... solicitet ... usque ad
effectum usucapionis. et ita d. l. si pignori 36. § et dicti
cum intelligendum dicit debitoris ... ad usucapiendum.
et ... legamus in l. cum nemini 7 § 1° cum ... 26.
de usucapt. ... ad annum ... debitore,
... creditoris ... cre deinto
... usucapionem ... sine ...
... loquitur ... ... sentire ...
d. § ... ...
d. q. 11 n° 15. Ex quibus ... usucapionem debi
tor ... si a Creditore ... educat ... ro

j

qui ... Vius leus ... quoing y Vrucajne sine Vita ... potest multo magis ... ca ... compeerit ... quasi ... illecentat. ... ut ... ratiocinari justum ... 3 pignoris ... hoc ... possid. hec multa dilatam ... ne obtruda Vobis Sigillas ... publicares ... adiri et que Scripsi lib. 1. ... calores cap. 13 et lib. 3. in l. ... accessio ... cap. 2 et 3 ... tempor. ...

Refutatio praecedentis doctrinae Ecquinititur in possess. causa rei ... bande.

... creditores pignus possidere hac argumentatione videri ... praeterea multis causis ... creditores possidere bona debitoris ut ... in l. 2 ff. ... causis ... Dnaren, Cuj. lib. 20 Observationum cap. 15 ... fortegueras ... lib. 1 tract. 7 ... parcimus ... volum. 2. ... pignus ... depositorio ... lib. 26 ff. depignorat. ... creditor hoc pignus in possid ... tantum in ... custodia ... in l. ... ind. ... cum ... ind. ... vindicat. l. ... 23 ff. depositi ... l. 3. § 1 ... de ... l. 1 ... l. ...

C. naali [illegible]

15. § sig. aut. 20 leg. seq. § sig. aut. 20 leg. seq. de vam[illegible] infect. l. filius fam. 145 ijde in lle leg. 10. l. sic cui legatum ff. ut in possess. leg. l. 2 C. eod. 40. l. 33. ult. l. sig. aut. 14 hoc. 15. 2. ff. ne vis fiat ei qui in possess. mis. e l. 33 l. credit. [illegible] ff. [illegible] ad. 4. si bona § [illegible] seq. l. in poss. 5. 5. [illegible] ej. jure l. ult. C. de [illegible] judi. por. l. 1. C. [illegible] in causa judicati pignus capi[illegible] sit [illegible] 11 § [illegible] de off. ord. [illegible] quotidie frequenter § § finali, [illegible] de dol. et [illegible] de eo [illegible] in [illegible] 26. et de jure Regio [illegible] in l. 2. e. 6. d. 8. partit. 3 l. 1. [illegible] 11 [illegible] quasi judiciale aut pretorium pignus in [illegible] a creditore [illegible] interveniente [illegible] in possess. ex [illegible] aut judicii jurisdict. [illegible] conventionale [illegible] voluntas

24.

[illegible]

plerique [illegible] differentia inter [illegible] pignus [illegible] creditori [illegible] conventionale [illegible] pignus judiciale [illegible] quod solo [illegible] tamen alley injuria [illegible] generare [illegible] differentia. [illegible] in d. l. 3 § [illegible] hoc. [illegible] creditoris [illegible] possidendo [illegible] [illegible] [illegible] in possess. mitt. (aliorum res aliena [illegible] [illegible] permissione [illegible] non habet animum transferendi in illum [illegible]

[illegible]

nudae rei custodia, ut rem ingleat pro eius dominio aliene detentionis d. l. i. § 1. ut in possess. legator. servandor. ... credditor ... possideat pignus ... neque creditor ... possidet, nec in tali animo recipere debet, quod sincerus est quod dixi sup. n° 9 de creditore habere animum possidendi pignus ... tionalis, ut ... posit persequi a quocunque possessore ademptam vel amissam possessionem; at de cannuge creditore nec possidere pignus ... nec si ca ... misere eius custodiae posse persequi ... actione reali id ... in l. ult. C. de pignor. ... Bilinguy Othomanus ... iure ... actionem realem ... creditori ... rei in cuius custodiam missus, ut tamen quae illi ... incubatione ex insistentia ... noviter, et benigne et ... actione quasi hypothecaria; ut quemadmodum creditor sine ulla ... possessione persequi ... in rem ... hypothecam ... possidet ut dixi sup. n° 18, ita quoque ... pignus ... nullam ... eius habere ut docet Cuj. ind. l. ult. et agnoscant ... ex antiquioribus et ... licet ... loquentes.

N° 25. adnotatio circa superiora

... ut hunc articulum expediamus notandum est quod diximus depositarium, commodatarium et similes non possidere: intelligendum esse quamdiu manent ... idem quamdiu licite utuntur re ex permissione domini, et quatenus dominus ... magistratus ... cum ... animum lucri faciendi ... denendi ... incipiant ...

... omne ...

[illegible] quamvis in [illegible] ... [illegible]
[illegible] l. 3 ... [illegible]
[illegible] 53 ... l. 28 ...
[illegible] l. 38 ...
[illegible] 54 ... 38 ...
[illegible] 73 ... 70 ... [illegible] ... evidenter
[illegible] evidentia [illegible]
[illegible] l. 3 ... [illegible]

Pulsatilla seu Nardus

Quarantallum

Apsinthium

[illegible] ...
[illegible] multo minus [illegible]
[illegible] ... l. [illegible]
[illegible] inmanu [illegible] palis [illegible]
[illegible] ... [illegible]
[illegible] l. [illegible] ... [illegible] vocat [illegible]
ducit [illegible] maiores de [illegible] ...
[illegible] ...
[illegible] marae [illegible] Varin. in [illegible]
[illegible] 98 ... lib. ... [illegible]
... 27 ... [illegible] in [illegible] par
[illegible] 7. Arn. [illegible]
[illegible] Ioann. [illegible]
[illegible] quantum [illegible] dormiat [illegible]
tamen [illegible] dormiens [illegible] l. [illegible]
[illegible] ... le Ducar. quoniam [illegible]

n° 27

— primus ... cuiusque ut ... Loc ... Thom. ...
... in corpore ... de ...
... et temporariis ...
... de ... actionis ...

... furiosus ... curator ...
... furioso ... quare si ... curator ...
... furioso ... Docet Jason in l. ...
§ ... n° 16 ... in l. 4 § ...
... Donel ... lib. ...
... 2 ... n° 11 ... Theuthier ...
... lib. 2 ... lit. ... Cum ...
... dicimus ... contra ...
... tempore ... acquiratur ...
Cum ... n° 27 ...
... recuperare ...
... per ... et ...
... l. 4 § ...
... l. ...
... acquisita ...
... n° 27 ...
... quoque ... voluntate ...
... animi ...
... innocente ...
... voluntates ... reddere ...
... Quare ...
... Donel ... lib. 5 ... 13 ... lit. B.

2

[illegible]

Scanno nuper q

... incantanti ... liber ...
... Cod. ... de acquir. rerum ... 28 ... Imai 1612
...
...
...
... gestione actore ...
... incantanti ...
... incantanti ...
... adversus ...
... de bon. poss. ...
...
...
... Castin ...
... del. ad ... C.

Quae parti ...

... inter ... iure ...
... acquirat ...
... inter ... auctoritas
in ... gerendo ...
... de auctorit. tutorum ... obligari ...
... Imperator, ...
... curatores ...
... firmanti ...

leniat in inventor tenuit capere, cum testam. dnts
a traditione ingenio[illegible] q[illegible] in[illegible] abstinendo quod
traditis fuerunt nunc caperet infans possidere
quae Cx[illegible] tacto [illegible] incipere possidere quiditas
[illegible] licet cautor [illegible] tulerit quoniam iam transivit
[illegible] et traditio C. authoritas tutoris accedere
nuda detentio itaque [illegible] [illegible] non generat
ita accipienda [illegible] [illegible] quaestioni
quo intellectu admiror nihil Cx. [illegible] ingenio
[illegible] doctrinae C. [illegible] cuius [illegible] ut [illegible]
infans acquirere posse potest. verum traditas
[illegible] accedat authoritas tutoris [illegible]
[illegible] [illegible] Aliter C. Garie [illegible]
[illegible] Tr. Plan. in l. [illegible] 26 C. de donation.
[illegible] 6. nr. [illegible] d. lib. 9. q. 11 [illegible]
[illegible] C. Nicol. [illegible] [illegible] multis quoniam [illegible]
[illegible] pag. 563. [illegible]

Quamvis circa pupillum [illegible]
id est pueri maiorem septennio et minorem 14 anni
[illegible] [illegible] non posit incipere possidere. C. [illegible]
et tamen C. [illegible] [illegible] existimantium [illegible]
sine authoritate tutoris posse incipere possidere l. [illegible]
[illegible] [illegible] 2. l. quamvis 32 § infans [illegible] l. [illegible]
pupillus et [illegible], quoniam [illegible]
non indiget authoris authoritate [illegible]
[illegible] licet [illegible] itaque ad acquirendam [illegible]
pupillus sufficiens [illegible] habet; [illegible] ad amittendam [illegible]
quamvis [illegible] derelinquat [illegible] in tempus [illegible]
quoniam ei non licet perdere, quamvis licet [illegible]
[illegible] facere sine authoritate tutoris [illegible]

Prorogat...

122

aliqua aut dare linguae quamuis amittat Corporales [illegible] ... poss. ... hoc tit. ut alijs relationibus ... animaduers. ... in d. ... Valen[illegible]

municipij ... possidere.

... circa municipes ... incolas ... aut ... aut Ciuitatis magna ... ciuiles ...

[illegible]

merito quaerunt interiores ... municipiis ... hereditati ... in ... hereditati ... ad ... ut ... municipio ... Roma ... municipiis ... persona ...

K

fal.

facile ad universos referre l. 3 § 1. ff. quod cuiusque universitatis nomine. l. aliud § refertur. ff. de reg. jur. & in hereditate jacente considerari non potest quae personae hereditas iacens expers est usufructus l. si ususfructus 26. ff. de usufructu. l. 2. municipibus ... paxe ususfructus per municipes ... l. 21 ... usufructus 26. de usufructu. l. si usufructus ... usufructus ... ususfructus ... finitus ... ususfruct... ... Valen... d. tract. ... p. ult.

Finis opusculi.
Materie quo tempus adest Laudetur Xpus

In aeternum Simul et materia Virginis Mariae absque labe peccati originalis: in hac Universitate ... salmantina anno 1588 die ...

f. Garcia ... Villalo...

De Privilegijs agricultorum
forensis dissertatio ad ll. 25. 26. 28 n° 1. 124
sed. 7. tt° 21 lib 4. nouissimae compi
lationis Castellae

Et si Iacobus Collantes per tres libros de
priuilegijs agricultorum disputauerit ad expositionem pragma
ticae quae extat, indicatae l. 25. et Ignatius del Villar.
in Silua res ponsorum cap. 16. per totum sermonem de ea in
staurauerit, et Parlad. in sequenti centuria differ. 79. per
totam nouissime Barbos. in 3. part. Recop. ad dictam l.
25.; non pudebit proferre in medium resolutiones quasdam
ad dubia quae solent in tribunalibus obuerti; ut inde
aliquae opinionis quaerelam faciamus, aqua senimus ambi
tione alieni. sed potius ut utilitati studeamus vestri chari
ssimi auditores. in hoc importuno tempore disciplinarum
sectamini exercitati habilitate. Et ut initium faciamus.
tota nostra legum materia nascitur ex labore. quo digna est agri
cultura: quae dixi Vlom supra laudatas. in principio suo
rum tractatuum multa et multos egerunt, Menoch. de arbitr.
casu 37. 8. a princ. Bobad. lib. 3. politice. cap. 3. ex n° 61.
Amaia. in l. ratio 29. C. de decurionibus n° 1 et 17. Pichar.
in manu ductionibus ad praxim 2. part. §9. n° 75 et sequen
ti notant vulgo Canonistae. in Cap. 1. de treuga et pace.
Et colligitur ex narratione dictae pragmaticae quae in expressa in
libris compilationis refertur. a Villar. et Collantes ibi:
por animar y esforçar mas aque la labranza no cese y
para conservacion y augmento della. Vnde cum praefata
ratio sit nostra, causa finalis, mens et anima legis, l. 1. ff. de
heredibus instituendis. l. proul. iuncta l. 2a ad senatus Consul.
Maced. Barb. axiomate 192. per totum; sunt in amplia
priuilegia haec. 1° et principaliter, agricultura ipsi ferri
et per consequentiam agricultoribus, docet Villar dicto responso 16.
cap. 1° n° 18, et cap 2. n° 1° et indicat Parl. dicta differ. 79. n° 2
cap. 1. nec recte hoc fecit, Collantes lib. 1° cap. 2. n° 3 et
sequentibus.

n°
C.

Copio in ferti. gaudere nrarie legu' privilegijs i-
tante g agros colunt, suis manibg; s. etiā eos g p famulos
aud stuctos o operarios proprijs expensijs nez utilitate agunt 3
ut sancitr. in dicta l. 25. in princip. ibi, los labradores,
o sus personas, o por sus Criados, y familia labraren.
un de ciuitatē incole 7 opidoni frequentis habitationis
q agros serunt, studeo g. coligunt p famulos. et operarios
suos, p cul dubio gaudent huius modi priuilegijs. cū
cui conueniunt verba legis quenit etiā dispositio l. 45.
totiēs, de damno infecto; s. verba legis cōprehendunt eos q. rusti-
ca agunt, p operarios suos. q. debent cōprehendi sub eius dispositione
ut docent, Cortatius del Villar, dicto tomo 26, cap. 1 nº 3. 8. et 7.
Barb. in collectaneis ad cod. in dicto cap. 2. de treuga et pace, Narbo.
in dicta l. 25. gg. l. aū. 1º quam bis in gede. cōuiz docet Platea in
rub. C. de Agricolis, lib. 11, aliter distinguat Collant. dicto lib. 1
cap. 2. ex nº 4.

n°
B.

Uno plane casu in ciuitate aliqua magna degens, et
rustici habitu gestū, si ac ignarus sit, in gaudebit hoc priuilegio
s. si se agricolā esse negauerit, in penā eius mendacij repu-
tetur esse agricola. ut minor reputatur maior, qui gaudet iure
minoris si se maiorem in contrahendo dixerit animo decipiendi ad-
uersariū. l. 2. C. si minor se maiorem dixerit l. 6. 7. 19. cum 6.
Gut. in authentica sacramenta puberum nº 56. C. si aduersus vendi-
tionem. Cabedo Pereira in l. si curatorem habens. 8. legis art. C. de
in integrum restitutionibus, et multi quos refert August. Barb. in co-
llectaneis ad dictam legem 2. et 3. C. illo tit. dixi. si hoc lege ig-
norante qui. p. a seueratio decepit: fuisse si aduersarius aliter
sciuit erat eum esse agricolam, et nihil omnino faciet dixit cūiz in-
strumento dici, asseueratio illa nullius est praeiuditij: cum qui sciens
in fraudem dolis, cap. scienti de reg. iur. in 6. l. cum donationis C. de
transactionibus, tunc q. etiā alterius dolosum e, cum intendat obscuras
cui veritatem. l. si alterius 3. C. si minor se maior. dix. Cabedo ubi
supra nº 8. et 9. Mauritius de restitut. cap. 170 et sorcia eodem
tractatu q. 13 cū 43. Barb. in dicta l. 2. nº 3. et in dicta l. 3.
nº 12 Collantes, q licet in proprijs aliuqiis fundamentis ita decidit
lib. 3. cap. 6. dnº 6. et eo si laudato Villar ubi proxime cap. 4 et
nº 14, ceterum si tacet quamuis aduersarius ignoret agricolam

[illegible]

nihil privilegia amittere [illegible]

et solvere [illegible] [illegible] [illegible]

[illegible] propria [illegible] [illegible] intelligentia [illegible]

[illegible] Jul. Marc. [illegible] [illegible] [illegible]

Petrus Fab. [illegible] videndi Tiraq. de retractu [illegible] n. [illegible]

4. gl. 6. n. 56. Coll. dicta cap. 6. n. 4. et alios [illegible]. — n.° 4.

[illegible]

etiam [illegible] principium nullam [illegible] [illegible] [illegible]

quoad privilegia [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] agricultura [illegible] [illegible] [illegible] [illegible]

[illegible] pragmaticae immunitatis [illegible] [illegible] distinguit [illegible]

distinguere debemus [illegible] [illegible] [illegible] [illegible]

[illegible] aut [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] in his [illegible] tribunalibus [illegible]

[illegible] ita [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] iudicarent

[illegible] etiam [illegible] aut [illegible] [illegible] [illegible]

hoc [illegible] agricolandi [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] dederet [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

annon

25

[illegible] ... Del gocio aditice benefici ... in pendent ... ut rusticis ... sicut [illegible] ... pendent ... privilegiis ... pragmaticae ut dixi supra n° ... annis ... rusticorum ... dilitigat. Coll. dicto lib. 2. cap. 2 ...

n° 5.

... [illegible] ... Et tamen ... recreatione ... gaudebit ... ... qui agros colendos, et licet ... agros exercet ut ... ut Berdadero Labrador ... Menoc. in Consil. ... 4 part. ... n° 5 ... Vantius de arbitr. casu 37 ... n° 43 ... ... Lib. ... cap. ... n° ... q[uod] ... ... beneficia ... quanti ... frequenter ... locatio ... tamen ... agere ... sive agricultura ... legis ... Barb. ... n° 12.

n° 6.

... [illegible] ... privilegiis ... pragmaticis ... agricola ... habent ... Barb. ... agricolae ... agricolarum ... quaerunt agricolam ... legiis ... debent ... Coll. dicto lib. 2 ... cap. ... gauderi ... tenuit ... agricola ... habere ... labradores ... Barb. ... n° 13 et 14 ... renovare ... Coll. ... privilegiis ... agricultura ... arrendadores ... agricultura ... Barb. ... approbante ...

n° 5

[illegible] . Et licet Agricola a colendo agro dicatur [illegible] ab etimologia [illegible] [illegible] principio Inst. de testam. 1. ibi [illegible] falo [illegible] deferri [illegible] Luenard. in tr. [illegible] legalib. loco 6. Bard. in locis [illegible] argumentandi loco 44; tamen non [illegible] qui agrum colit agricola reputatur quo ad [illegible] legem [illegible] olitores, vinitores [illegible] arbores [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pragmatice [illegible] [illegible] mentes [illegible] Regis, [illegible] [illegible] in segetibus tritici [illegible] [illegible] [illegible] [illegible], ibi: *Y aviendo entendido como los labradores [illegible] culti[illegible]* [illegible] [illegible] [illegible] las tierras [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible] Codice [illegible] leg. indebito [illegible] ut ibi ex [illegible] [illegible] [illegible]

[illegible]

[illegible] de pignoribus & Valdai eodem tract. cap. 12 q. sententiae iam locis interpretantur, hii dicti indistincte etiam unicuique accipiendi, sequenter,

n.o 9.

ut nunquam liceret e dictis res pignori abducere & sinthia bona si sequerentur ut ego animali et dominantur idem iubebatur in aratro cuius meminit Quintil. lib. 5. instit. oratoriarum. cap. 9. notante Valduin. ubi nunquam opinione videtur dissentire Sr Greg. in l. 4. q. 2. tit. 13. part. 5.

ergo nunc ... inhibitum e hic boves pignori dari ut consuerunt ... iure ... et alia ... Quia res pignori ... dicta l. 4. partit. ... aratores & ... parte ... ut ... tit. 27. part. 3. ita ... temperat ut ... bonis ... fallando otros bienes eno. ... nihil ... habet ... dicat ... tit. 14. lib. 5. ... fuit ne ... alia ... et instrumenta rei rusticae ... cuius ... domini ... aut ... accepta a domino fundi ... aliis bonis ... duobus bobus aratoriis ... in l. 43. tit. 4. lib. ... in l. 25. tit. 13. ... recopilationis ... reddi ... dominicis ... sancitur ... rustici ... agricultorum ... aratoria ... tempus ... frequenter, ut ... debita ... agricolas ... animalia aratoria ... rerum rustica

n.o 10

... ne ... rei rusticae ... Regia ... que dichos labradores no puedan ser executados en sus bueyes de arar ni en los aperos de labranza ni en los barbechos ni sembrados en ningun tiempo del año aunque no tengan otros bienes ... cuales pueden ser executados en sus personas ... dichos ... privilegiados no teniendo ...

[illegible]

rechos a su mag.d devidos el alg.do por arrenta de el J. lib. heredad el tercero, por lo que el dicho J. lo ubiere prestado para el socorro o benefi. de su labranza. Y q. aun en estos tres casos no se les pueda executar en un par de bueies, o mulas o otras bestias de arar, sino en bargo de que no tengan otros ningunos bienes. · n° 11

que privilegia ampliata fuerunt a Philipo 3. in nova l. 28. de forma que se estienden tambien bienes privilegiados, y con el mismo derecho, e tan q. [illegible], en el qual no pueden ser executados en [illegible] en que estubiere en las eras o en el [illegible], hasta q. lo aian recogido en los troxes, y entonces queriendo el labrador darlo concertado para la paga de la deuda se le aia de tomar el executante a la tasa. aunq. el [illegible] a menos, y ultimamente el Reyno nro S. por su novissima prematica q. el S.r [illegible] hizo se estendio el dho privilegio de bienes a 100 cavallos de ganado [illegible] dexando una y otra [illegible] mas que [illegible] en su fuerça, y vigor en lo q.to a lo di[illegible] puesto en los tres casos por la lei 29. Docent et illustrant [illegible] [illegible] [illegible] Auiles in capit. [illegible] [illegible] [illegible] n° 9 et 10 fol. 99. [illegible] Regul. 245. [illegible] quotidian. cap. ult. 3 part, §. 3. exp.n 16. [illegible] Prod. de execut. cap. 9. n.o 62. [illegible] in praxi 1o tom. 4 part. cap. 2 n.o 36. Azeved. in l. 10. tit. 21 lib. 4 [illegible] n.o 46. Pich. in manu [illegible] 1 part. §. 9. a n.o 75. Hevia in curia philippica 2 part. §. 15 n.o 9. Villa Diego in [illegible] cap. 2. n.o 77. et sequent. Bobadi lib. 3. politic. cap. 3 n.o 61 et seqq. [illegible] lib. 1o cap. 3. [illegible] dicta [illegible] 79. cap. 1 n.o 7. [illegible] n.o 16. cap. 1 [illegible] indicat. 29. [illegible] · n° 12

P. Cu postea a procuratore generali cleri Hispaniae fuisset supplicatum a prematica que extat in noviss. l. 25 [illegible] in supremo consilio die 28 decembr. anni 1594 re cretum fuit. q. los dichos privilegios no se entendiesen concedidos en q.to a los q. no labradores debiesen de los diezmos q. ellos mismos ubiesen causado de sus cosechas, y de los q. debiesen a los interesados en las demas por averlos cobrado de otros como arrendatarios con orden y con receptoria de dhos S.res; en la qual se declaro q. no se entendian concedidos privilegios, ni en [illegible] novedad a [illegible] que dando en su fuerça y vigor todo lo dispuesto por derecho comun, que [illegible] 26. [illegible] Docent Villa Diego [illegible] Villa Diego et Hevia [illegible] debita decimalia [illegible] Philipi 2. [illegible]

tamen. ubi ll. anterioribus et ideo executio non sequitur in non dictis bonis privilegiati, sed tunc adeo posse veniri quando alia bona desiciunt de quo tamen supra n° 9. Consentit D. V. Philippus g. loquens. Varb. indicata l. 2a unica, testans eandem declarationem facile factam per Dom. Nilij supra citata dict. l. 26. ad rectitudinem clericis... in abenet ...

n° 13. quarte

... bona privilegiata ... ut ... aut q. no tengan otros Bienes, ... ad ... sententias abierunt ... Varb. ad l. 25. q° 7. apparet alia in ... casibus exceptis et in casu decimarum ... unde ... aliorum bonorum ... erit excusio in reliquas subl. aliorum nullaeris executio ... fermius ... l. a dicto ... 25. § in Vendicatione ... Vebiziamus ... petere ... Agricola ... alia bona ... et si ea ... indicauerit investigare ... aparitores ... alia ... y si negauerit ... alia bona habere, entonces ... dolo por ... diligencia ... el mandam. executorio ... execucion en los Bienes privilegiados ... eleganter, Villar, ... 16. Cap. 1. an° 22, Coll. lib. 1° Cap. ... n° 10 Varb. indicat. 25. gg. 11 ... in his Casibus, et si nulla alia bona habeat ... tunc ... relinquendum ... Agricola q. inutile esset sine necessariis instrumentis ... et ideo quaevis ... exprimat, etiam relinquenda ... los aperos ... p. A. Varb. ... proxime gg. 8. que e ... dicitur ...

n° 14.

Nunc opportune quaeri si aliquis q. non sit Dominus fundi vendiderit agricolae boves aut reliqua instrumenta aratoria habita fide de pretio sub ... aut ... titulo debitoris alieni et sub obligatione quarentigia ... posse ... exceptiones ... qui ... elegans ... in qua negatiue respondendum est q. ll. generaliter prohibent ... executionem capiantur nisi in certis ... exceptis. Unde ... ad alium extendi non debet ... Servis ... de manera q. ... mandado ... siembran o ganados ... O ... de hoc ... potius generaliter ... quien tiene en sus ... Bienes por deuda ... en carta ... de otra qualquiera manera. ... his Casis ... Tit. ... Cap. 1. n° 7. ... Varb. indicata l. 25. gg. 10. n° 16 ... addit ... fide de ... transactum ... et ... quisierit ... ... libertatem ... in l. ... ff. de ...

Adeasq. cons. una cum accurate disputatione in casu simili quod Capp. Rolandi de annui reditib. lib. 1° q. 14. n° 67. et sequentes expresse apparet persone et debito[?] ... docuisse Cold. lib. 1° cap. 1. n° 9 quia respondet Vill. ubi proxime quare talis cautela vale ut cum ita vendunt faciant in instrument° apponi hanc ego conditionem clausula aqual venta ... entendida celebrada i perfecta en caso que el comprador aia pagado el precio dos anos: desuerte que pasado el plazo ... el vendedor ... ita ... dicho dichos bueyes o rebaños ... a tal entonces se declara que no es visto aver (dolantado[?]) de trans ferirle el dominio de ellos ni ... de ... tacion ... posesion corporal ... casio quo casu ... agricola ... vendit animalia ... vindicare tanquam rem suam, nunquam a se abalienatam ... hac ... minime interdicitur ... prohibeatur res agricola ... capi, ita ... venditum nunquam agricola ... comprehendi sub ... pragmaticis dispositione; faciunt ... Aa. m. B. Q. de ... inter emptorem et venditorem. Et eaque ... docet ... multa ... Parl. lib. 1° rerum quotidian. cap. 8. ... sufficit hoc in casu rem specialiter hipotecare ut solet sufficere ... rem ... hipoteca speciali, ut cum plurimis docent ... cap. 8. ... § 98. n° 7 et sequenti Villadiego in forma libelandi n° 76. in fine ... in hoc casu nulla e obligatio hipotecaria ut dixi quare omnino ... dicta cautela recurrendum e.

Resolvenda ...

Alia ... ... lege ... personas agricolarum ... incarcerari ... debita ... descendentia, posse dubitari an ... debitor ... capi ... bona ... legiata ... Et negative resolvendum ... generalia ... tis 1, ibi, por deuda debida ... o ... en otra qualquier manera que generaliter ... quacunque ... debiti ... ex delicto ... proveniente ... vendunt ut resolvunt Parl. dicta ... 79. cap. 1° n° 10 ... Villar. dicto ... 16. Q. 1. n° 2. nec e minor maiori immunitate gaudere bona ... agriculture quam ... agricolarum ... sequenti ... debita ... personae agricolarum capi ... in 6. mensib. ... anni ... 1. Philippi 2., et nunquam bona ... legiata ... debiti ... ut inde ... docui ... principaliter ...

nº 16.

agriculturae, et per sequentias agricultoribus;

Hinc inde sciendum est quod Las cabalgaduras de paso y harrieria, yeguas de vientre, las bacas que se tienen para la crianza, quamvis vis aucte[?] Dominus de agricolarum illius status in opere vendi sub rius legibus mandato agriculturae licet in ullius nisi eius [illegible]: quia denominatio cuiusque rei sumitur ab eo quod in illa abalet[?] l. quaeritur de statu hominum facit adversus l. in l. legato 45. de legat. 3. et ibi insignis doctrina Bar. et hec ulta, ea videntur aliquam cum separata quo ad eius usum operibus destinata, secus si ad usum eius esset cum alterius exemplo etiam est elegantem et indeterminis ferre in l. legatum 65. §. Juniores ff. eod. tit. ubi legatis scribis pictoribus, n[?] generi artificis alicui artificii, quod etiam pingebat si in alio artificio erat frequentior ... sic alia est vere et proprie agriculturae destinata, quamvis non Dominus illius Status ad alios usus tempore quo non est usui agriculturae. Comprehenduntur sub hac l. quae stare et proprie agriculturam et instrumentum ... expressius in l. quaesitum 12. §. si aliqua parte ff. de instructo et instrumento legato. Docent hic et hic ita fundamentum nec explicant Barb. in dicta l. 25. quaest. 2 nº 6. Villar. in forme Inventarij huius pragmaticae Coll. dicto lib. 1º cap. 3. nº 5.

nº 17

Quamvis in nostra pragmatica permittatur fieri executio, en el pan que esta ... quando se manda que la Ley ... la executante, aunque la pragmatica hoc limitandum è en el trigo que esta apartado de ... para sembrar: alioquin semine deficiente, deperiret agricultura: quare hoc triticum aut hordeum, aliud ve quodcumque granum appellatione instrumenti ... tinet, nimirum quasi ... ut ... gestorum doctrina Bartoli in l. quaesitum 12. in principio ff. eod. ibi; de instructo aut instrumento legato idem docent Coll. lib. 1. cap. 1º art. 3. Barb. ubi supra. quaest. 4. nº 9.

nº 18.

Nobis quod etiam examinanda circa dictam l. 29 mei[?] tit. an sub appellatione: centum capitum de ganado lanar, que iubent exibere Agricolae, ... ita pro operis, aut bos ... respondendum est: quod hec alia non tasta ad fertilizandos agros ... vel ... simus agricolis dictis obesantes. ad hunc ... sufficient, quod ... ignorarent ... in l. cum quaereretur 65 §. ult. ff. de legat. 3. et in l. degrege quo de

n. H

in tract. de instrum. legato, q̃ caprae non comprehendentur q̃ nec ff
vinis agriculturae, q̃ edicta l. c. epigi. eg. ōbes ariete, et ing
ni diuinis antiquitatis ad diff. 3. capitum, quam hic hispidis ap
pellans ad effectu lanae Virgil. in rustica expressissimis lib. 3.
georgicorum illis versibus:
hoc satis est armentis: superat pars altera curae.
lanigeros agitare greges, hirtasq. capellas:
Ubi tibi versus omne pecus dixerit in nomine, et obes lanigeras
dixit, capras vero hirtas, ad diff. 3 pecudis lanigerae. nec equum
de improprietate sermonis. auctoritas maioris quam dignitatis q
quantis Ipsius, numerorum l. nec quam dictionis proprietatem
predixit q cum l. nras tenere pecudes lanigeras, non
consideres ex parte caprae quae pilosis non lana, ipse ergo
in §. ius pecudes. ibid. Ulpianus dicit. ibi sicut lac, agnus
et lana, deinde q. si l. tantum diceret lanam capitalibus oris
vel ex capre retineret. l. legatis 6 § 5. pecorib. de leg.
3 .. per verbum lanae. . satis exprimi videq. pecore enim
Vinte obser bandes e lues. obes lanado lanae sumitariae
et agnos et agricolas q. ratione ff. nec minus comprehendunt
quam hircus greges. Ubi eleganti in l. tertio §1 § Ult. de legat.
3. ubi tamen retinerent arietes aut agni, sit tamen tunc l. me
minisset. Sit de ... legati 6 § 3. dicit et ibi
Bart. eodem ff. nec est amplius notemus in hoc Cap. = Finis Cap. 1

Ad Dl. § 25 Cap. 2, et ad leg. 28
Vete Cod. de Agricolis et censitis

Cap. 2:

in l. 29. statutum fuit ut
agricolarum capiti ostendere jure civili in 6 mensib. anni ex Iulio
usq. ad decembrem q. statuto onus habuit ex autentica agricolarum
e. ... iti ... illis insidente, arca vero pragmatica expli
catio multa excogitarunt expositiones q. interpretes ... super
cum ff. ex d. l. 28. qua nonissime sancitis nullo anni tempore
ad ... pose capi. Ho facilius e, necesse ipsis agricolis
rei rusticae deservari. licet haec non sit potissima principalis
ratio, ... agricolarum ut plures in Cum tant huic nouilli
simoque ... q. ideo ... naturali. ... hoc privilegium relative

ad id ij cetera ut dicat ex illis verbis. qui a personas dedit ibi laborat
dicit. atque certe Agricolas dici in praecedenti § et ij operarios terr-
as colline ut notavi in principio commentarii, quod etiam hoc ipsum adeo
deo spectat. Et tamen in his non militat id quod operarios potentes
cura agrorum exercere: igitur ne captio personarum agricultura deseratur
vel omnimodo aut ut dicitur. adiegeatur,

n°
20

Notandum est quod dicit, per
negationem de eadem exequutionem non posse dari. Etiam pro debita fiscalia aut
cetera privilegiata. Ergo dicendi superior traditio vero, quod Vall.
exprimit Cap. attendens est exclusum Cons. ad audientiam de decim. 1.
Item apud Labeonem 15 § hoc interdicto deinde id quod non
valet argumentum a dispositio in 8 no Cons. ad dispositum in alia ut no-
tavi sup. n° 15. quod licet ibi procedat de debitis civilibus, quod ergo
a illis non descendat, nullum debet tenere subtus Comes tenendo
cum ignorat. Nec Vall. d. resp. 16. Cap. 2 ex n° 26. Nam alias
ferens ind. d. 25 ita 13 ex n° 11. Unde male iudicant qui
simul personas Agri cultorum Capiunt pro tributis aut reditibus fundis
tamen apud tribunalia multa in quo aut potius inconveniunt.

n°
21

Ut
Etiam notandum omnem Cap. Capturam interdictam, in personis agricultorum, ideo
esse interdictam cum de pert. fulminatas censuras dicentes a iudice
ecclesiastico et implorandum auxilio quod dicimus brachio seculari: ideo iudex
secularis non debet impartiri auxilium quod tamen dixit nec in-
cerari eum pro debitis civile quae lex. Atque cum experimentum ulterius
in casu merito ne in poena sui committat denegare auxilium quod tamen
ratio. Ut autem ad ultimum Coll. Cap. 2. Cap. 15. n° 10

n°
22

quod hic autem Cap. 14
eiusdem libri tentat nec posse exercitari agricultore pro eadem debitis, sine
carcerari non posse, fretus quadam Doctrina Comitis de Leon. in sententia
informationis nimis audax est medica a iure absona, in qua in spi-
ritualibus. Nam civiles non sortiuntur effectum nec tale circa modum pro-
cedendi ubi illa in alia laica, obligant in tribunalibus foroque
ecclesia sancta Maria, de Institutio Ubinoratis. Item quod aliquando in
carceratio quod alia exceptiones cum pro hanc non ligeti personae agricultoris
ut vero illam ipsam eo ab opere rustico prohibeat. Deinde quod omnino
exceptiones nec meminit nec forsan ex defectu potestatis memi-
nisse potuit, quare ut casus omnium remanet in dispositione

ciusd

iuris, toti l. Imodicissime co Cu fitt ff. de lib. et posth. ideoq. in distincte uidemus, in otis tribunalib. extacii aduersus agricultos seu in solutionem cessantes Censuras decerni; aliaque dua aduersus eo dicto Illustrissimo duo suspecet iudicialiter etiam

nº 23

tunc

Neq. et eo uigore hoc priuilegio potiunt quandiu et ex agri cultores; et ideo quod deuicto ante agricultura Itrarde et ex si Dueniant, potestque ea expercere exercere et deuico in agricultura dicto potestilla deserta, incarcerari posunt. l. q. ius actori que itel, ex dicto inmutari in pt. ex noue qualitate, et sone suo ueniendo l. Pomponius, la 2 ff. de neg. gest. iunct. l. penul. ff. de iurisd. om. iud. Deinde quia dicet Experie. dei Agricolae si deserat Agriculturam, pt capi quia cum priuilegium hoc pro agricultura agricolis cedatur, cessante eo cessare debet et priuilegium, quod l. sub praetextu. C. de sacr. sanct. eccle. et cessante de apell. Girond. de priuil. nº 1207 et ita in ragis terminis docent Coll. d. lo. 2 q. 3 nº 2 et q. Sal. d. dist. 73. q. 1 nº 3. Villar. d. q. 2 nº 2. Narb. et ho. gloss. 12 nº 5 et 6.

nº 24

Cesar uero iure legis priuilegiis indeuici descendentib. ex de licto siue priuato siue extra ordin.º siue publico. priuata delicta dicuntur per q. et quoda. ro damnum datum priuato auferri, quare et condemnatio cuiuslibet utilitatem respicit quasi ex forensis condemnatio dicitur in l. 1. ff. de incend. ruin. nauf. et ciuiliter intentari in l. licet 43 § ea obligatio. l. in lo gendu 45 § q. ita ff. de peculat. qualia sunt furtum, rapina, damnum ex l. Aquilia punitum, et iniuria. l. a del. et alt. l. 1º et tot. tt. C. tt. pertot. ff. de priuatis delictis. Crimina extra ordinem quaedam deggio tem niter. M. Late nos et se habent tanquam crimina incerta aut daggi a propria malitia, et nomine carent. Tamen quamuis incertum et innominatum, retinent tamen crimen extraordinario nomine puniunt. dego in l. 1º et intt. legitt. ff. de extr. ord. crim. publica ff. sica maiora crimina inqq. t. et principaliter respublicae lediti quapp. pena in eis inflicta ad publicam utilitatem referr. l. ita vulneratus §. ff. ad l. aquil. l. locatio q. §. q. ilicite ff. de publicani, et Velliga. spec. ff. hic illa crimina dego ll. late quarant ut essent publica ue luti iulia maiest. iulia peculatus de adult. Pompeia de parricid. et similes deggin l. 1º et titulis legit. ff. de publicis iudi. Hec oia no

nisi ne

minore delicto [illegible] tenduntur [illegible] hoc [illegible] ut sit [illegible] adsignificandum quacumque dolus iniuste adhibitus. l. eos [illegible] C. de [illegible] et acc. [illegible] quacumque delicta, [illegible] in superioribus recensui agricultores [illegible] erari solent. [illegible] alii subdoli creditores et advocati cavillantes, ut miseros agricolas carceri mancipent, fingunt querelas, ex textu [illegible] dolus adhibitus sit in [illegible] ut [illegible] de delicto [illegible] quacumque damna ab eorum [illegible] data et [illegible] deducunt [illegible] criminales imponentes, hac cavillatione iudicibus fraudem facientes [illegible] pragmatice, [illegible] ab auctoribus tractatur [illegible] [illegible] ut [illegible] quando criminaliter agendum sit [illegible] debeat intentari [illegible] civiliter ut effugiant iudices carceri agricolas mancipare [illegible] si ex [illegible] ageret [illegible] emotione [illegible] licet dolus in eo [illegible] agendum est civiliter l. si ex depositi 12. l. ex [illegible] de [illegible] et act. [illegible] 157 §. in [illegible] de reg. iur. [illegible] tradit [illegible] quacumque [illegible] nec ista attendit, [illegible] firmare [illegible] [illegible] [illegible] in toto d. l. ex [illegible] [illegible] [illegible] in [illegible] adhibitus [illegible] de [illegible] §. [illegible] 7 [illegible] de [illegible] l. si [illegible] 5 §. si quos [illegible] de oblig. et actio. [illegible] elegans explicatio Bart. in d. l. ex depositi, quando [illegible] ageret [illegible] Pich. in [illegible] n.° 27. [illegible] de [illegible] [illegible] nascuntur [illegible] theoricus [illegible] in [illegible] [illegible] [illegible] excipe si [illegible] crimen stellionatus [illegible] sive aliena [illegible] sciens et fraudulenter [illegible] obligata vendidit [illegible] obligatione [illegible] uni venditam alii vendidit [illegible] hypothecatam alii hypothecavit [illegible] in casibus stellionatus [illegible] [illegible] et §. [illegible] de crimine stellionatus. l. 2 [illegible] C. eo. [illegible] l. [illegible] §. 1.° l. si [illegible] in pignore [illegible] §. [illegible] de [illegible] si dolo malo et pro auro [illegible] [illegible] 10 [illegible] part. [illegible] 7 in [illegible] 16. partit. 7. [illegible] [illegible] 81. Farin. [illegible] 182. n.° 4. et [illegible] tom. [illegible] variar. [illegible] 7 [illegible] in form. libellandi fol. mihi 290, [illegible] [illegible] ita [illegible] affirmavit, [illegible] tenetur [illegible] nam [illegible] crimine stellionatus tenetur [illegible] [illegible] decrim. stellion. [illegible] quamvis [illegible] 1 [illegible] §. 7 [illegible]

[illegible] damnum datum ab [illegible] agricolis nullo modo agendum est criminaliter [illegible] civiliter, nisi arguatur [illegible] malitia in [illegible] [illegible]

m. [illegible]

misione pecoris l. 2 § 1 de nox. act. [illegible] pecoris que
[illegible] Dominus noxalis [illegible] actione tenetur d. l. 2
in prin. de nox. act. l. 1 § ita q. ff. si quadrupes pau. fec. dic.
ergo [illegible] in his actioribus minime incultus de his duo Dominorum
[illegible] potestate [illegible] forense [illegible] Vill. diego. in obs.
libell. n° 118. g° ludex [illegible] querela [illegible] prius examinet ex
et de sumaria declaranee. Ergo [illegible] potius [illegible]
[illegible] deprehendi minime decernat mandatu incarcera
tionis, [illegible] modo procedendi [illegible] aliqua pena [illegible]
[illegible] civile [illegible] criminaliter intendit [illegible]
dignus [illegible] incriminati [illegible] de iurisd. [illegible] Parl.
diff. 188 n° 9 qua cautela aut cautio [illegible]

26

an

ante pro debitis descendentibus ex quasi delicto agricultores incar
cerati possunt, singuli [illegible] dubitari immo affirmant [illegible]
2. q. 16. n. 5 Farb. ind. [illegible] 5 q. 18. n° 3. [illegible]
[illegible] hec [illegible] medicamento [illegible] mihi videtur. 1° quia [illegible] de delic
[illegible] quare ad alia non pot. ad auctoritate extendi. [illegible]
inde [illegible] extendi est [illegible] identitate rois arg. ex l. [illegible] 32 ad l. aquil.
[illegible] delicto [illegible]
132. n° 7 [illegible] quasi delicti [illegible] culpa [illegible] negligentia aut omisione
ut [illegible] Donel. lib. 15 [illegible] Ca. 43. Vich. in Rub. inf. de
oblig. [illegible] ex quasi. del. nasc. [illegible] ex hac [illegible] extensio fieri [illegible]
tande [illegible] nullus delictum [illegible] sine [illegible]
[illegible] in l. cornelia [illegible] ad l. Cor. de sic. [illegible]
[illegible] Cp. 19. Juan. de Mendoz. ad l. aquil. lib. 1° Cp. 2. sec. 9.
at in quasi delicto talis animus aut [illegible]
[illegible] Gomez [illegible] [illegible] n° 27 [illegible]
int. [illegible] Tauri [illegible] l. 10 n° 5 lib. 5 Vill. Docuisse mulierem [illegible]
[illegible] descendat [illegible] carcerari [illegible]
carcerari [illegible] debito descendente ex quasi delicto [illegible]
amplia [illegible] placet [illegible] in agricola sic et in mulieri [illegible]
quasi [illegible] in legibus [illegible] in [illegible] ex l. 64
2 lib. 6. [illegible] delicto [illegible] quasi delicto incarcerari [illegible]
[illegible] argum. [illegible] ut [illegible] mea opinione [illegible]
[illegible] Et agricolae [illegible] incarcerari [illegible] delicto ex

27

quasi delicto descendenti ideo ex p̄o sicut ut ex p̄o serunt innouili arg. ex Cap. ad audientiam de decimis

Et delicto descendenti ex causa depositi frumentarii vulgo de administracion de alhondigas y positos. possunt agricolae in carcerari, por un auto del Consejo que es el 4.9 en los nouissima mente impressos en los antiguos fol. 42 item ex qua cumque alia causa sint fraudes creditorum proprias res occultare incipiant.

Duo crimen... Dominus ... aut res proprias subtrahunt. l. ... §. 1º ... de crim. ... imo et iccolones ... ad ecclesias ... ex loco sacro ... re trahendi ... ut ... sancitur in l. 13 ... l. 1º ... videndus tamen sic ... resol. ... tract. 2º resol. 17.

Sit Deus cum matre sua Benedictus

fine dedi XIV Kal. ... Domini Salmantinae autore D. D. ... Dinandez ... ad gloriam et honorem Jesu Christi et ... Mariae anno 165. ... Joseph ... Dominique ... Mariae

D. Garcia ... Villalobos

Finis capitis 2i

Caput 3 ad legem 25 § 3 dep. Saoe Dominium in fructibus fundi cetteris creditoribus.

24 Junii ... n 28

paragraphi sanctio ... per mo neque habere iure communi observantia ... fundi ... obligato l. si in ... 24 § si colonus ... cod. ... § ita ... ut decet ... relatu ... ind. l. 25 ... 15 ... ind. l. si servus 61 § locavi ff. de furt. ... Rich. ind. § ita ... n° 10, ... satis expose franciscus Brocus n° 1 hec tamen tacita hipotecas nullus ius ... domino tribuebat in fructibus fundi, quare cum ... creditore superveniente ... quia ius ... expose Juenta ut ... emptor n° 10 ... 3. ... Amator, Rodrig. de ... creditorum ... Stefan. ... forens. ... n° 2 ... n° 14: maleus ... contra ... docent ... hypotheca ... creditoribus ... nullus ... rei ausus fuit affirmare ... habemus ... d. diff. 79 ... 3. n° 1°

n 29

Hac de causa cautiores domini ... solebant ... ut fructus fundi ... manerent pignori obligati donec merces solveretur: qua ... colonus sine voluntate domini ... a fundo colligere, aut se parare ... poterat, ... si ... faceret in furtum incidebat ... colligeret l. si servus 61 § locavi & ff. de furt. ... alios fructus ... facit quam ... voluntate domini ... in casu ... ceperit ... quocumque ... in casu ... facit fructus ... domini voluntate ...

Agricultorum [illegible] 3

insti. de rer. diu. iuncto d. [illegible] ocasum. aliogn pendentes fructus domini [illegible] censentur consequendi [illegible] fructus per ser. dom. [illegible] antequam separentur dominii sint, et [illegible] voluntate separantis, incidunt in eam hipothece specialiter [illegible] ut prius domino diligenti qua alijs creditoribus eo pacto, et [illegible] separantes ut statim, et [illegible] pignori sint; [illegible] pignoris et hipothece, et ceterorum creditorum hipothecas speciales, generales, aut tacitas [illegible] ante [illegible] alterque eam dominus [illegible] habita [illegible] eiusdem rei hipothecas sint [illegible] in ea [illegible] creditorum [illegible] prius [illegible] ut ita dicam domini hipothecam, quam ceterorum [illegible] [illegible] n° 14. Docent ita [illegible] licet nec [illegible] intelligant neque [illegible] Carl. d. disp. 19, [illegible] n° 6. [illegible] cum alijs d. gla 15 [illegible] n° 34

n°

30

parte, [illegible] demum nra lege introductum sit [illegible] que en los frutos de las tierras sean preferidos [illegible] dueños [illegible] a todos los otros acreedores de qualquiera qualidad que sean. [illegible] preferantur quibuscumque creditoribus, et [illegible] de hipothecis specialiter [illegible] ut [illegible] in [illegible] eam [illegible] modo domini [illegible] [illegible] ampliationibus, et limitationibus [illegible]

n°

31

1ª ampliatio ut [illegible] habeat locum postquam fructus a fundo separati sint; aliogn. superfluum esset, et [illegible] privilegium hoc [illegible] tacite hipotece: pendentes enim fructus domini fundi [illegible] ipse, [illegible] hipothecatum; quare [illegible] [illegible] Docent Carl. d. [illegible] n° [illegible] n° 66. [illegible] Utiliter hoc iure [illegible] ad fructus [illegible] alijs fructibus [illegible] adhuc prerogativam domini [illegible] et [illegible] aliogn nullum [illegible] est [illegible] ut fructus fundi [illegible] permaneant, ut in [illegible] pignoris in illis possit exerceri, [illegible] [illegible] hoc sine domini fundi voluntate [illegible] [illegible] sua hipotheca, atque [illegible] [illegible] habere [illegible] et vindicare [illegible] [illegible] hipotece [illegible] quotidiana ampliatione [illegible]

Oviedi d. 29 5 p̄s verb. iuri ... 24 c. que ex alijs remanz mentis de qu... sans. d. n° 05 ...ortimas ... advocato ... executio- ne, remune ... reditib. ... unde ... sine ... terre in ... mationem ... tenenti, percepta fuisse ... ipso fundo ... modicj tritici aut ... ... coloni ... reliqua ... fuisse: ... parentes, ... ut in illo ... creditores ... ex ...

32

Sit Etiam 2.ª amoliatio ex Oviedo.

... et Barb. n° 95, in ... fundi ... hipoteca ... et ... privatiua ... annj ... percepti ... p ... annorum precedentium. ... ut ego existimo ... amoliatio e ... habet ... Vicario ... de fidei. ... Paul. Adiuvans ... interesse ... ... tenere ... in ... ... temporis ... ... obligationis ... quo ... notare ... in ... 229 ... Paul ... ... antiquiores. ... in ... vis ... randi ... anni ... locato ... Jure ... simili ... Benefitia habet a Summo ... imposita ... reseruata pensione ... ex forma ... Camerali ... creditoris ... anteriores ... ... ut docent ... Cancelarie ... n° 45, ... 46 ... Beneficiaria ... 72. Sal. in ... 42 n° 15: ... fructus ... annorum ... anterioribus creditoribus ... hipoteca ... docet Sal. ... 38.

33.

Ampliatur ... asertio ut procedat ... fundi relocatus alli Colono ... gratis, etiam fructus, ... aquo ... Colono percepti tacita hipoteca ... manent Domino ... mercede fundi ut ... Salras ... 29 ... Colonus ... Adiuvans 53 ... notatur ... que admodum essent ... Colonus ... perciperet ex ... collige ... modo ... hipoteca ... alteri fundum ... Colonus ... obligati erunt ... quantitate ... locatio ... quamuis sub minori ... locatur ... insignis ... inter hipoteca ... hipoteca ... tacitam ... Urbano, ... latens

et obligare pro mercede pdij Urbani quaerenus 2. gnum obligatae. l. solum 218.
soluta ff. de pign. act. et iant. inquilinus grati pdei inaoli res abeo inue 12.
et nullo vinculo pignoris tene. l. pomponius. 5 in gine. ff. in qq cau. pig. vip
tac. et h. ro dicto exempto. q. quarey ipsi fundo acceat frumento cujncoeng
cum l. grat. 25. 5. porro ff. de Usu. et da pendente aglebatt domini fundi
l. quaeus 24. ff. deni und. quare hipoteca fructus ... fundu ipsa
quaerit domino sine cultoris intuitu nunquam ei, et da porrisenne ... ded
oris nisi domini voluntate eos, tollere ... si servus 57 5. locari ff de furtis
vero hipoteca tenet illatarum, ri in 5. lus Urbani ri pendet a dio ipso l. ex tinnu
a ministerio legis inter 3 ueres eos redentis ... tanq habebit locus ... obli
gationis et ... et quaerenus 2. inquilinus obligatur. et. Unde ... hac
ta nulla hipoteca cum teni .... nec ej hipoteca sine ... ex
plicat subtiliter Ant. fab. in ro ali, ad ... in leg. 27. 5. 1. ff. ...
Ubi aliquaerenus ... Pauli ad ... et ep alijs ... d. ...
epm 75.

Et ut ad limitationes accedamus 1.º ie quamuis ... dicte do
mini fundi ... creditoris ... cunq. qualitatis ... tamq ...
a ... aliud semen mucuo ... ad seminandum, procul dubio p...
... est ... docente ... de tacit. et ambiguis ... lib. 12. 1. 2.
n.º 21, et 12. Ant. fab. de erroribus pragmaticorum, decade 51 ...
... epm 15. quamuis ... l. vol. in l... 4. 10...
n.º 5. ro est ... a dominus ... habet ... mercede ...
fructibus ... ac fructus ... nisi deductis ...
... fructus in ... de in ... ad seminandum ... deducendum q ... in ...
... hipotecis ... sunt.

Secunda limitatio ... ad ampliationem quae fuit sup. n.º 5. ...
... fructus ... a colono ... domini ... hipotecarii habere
quamuis ... pecunia ex ... redacta minime in ea durare ...
nec ... rogatiuas habere ad ceteros creditores ...
potecarios ... in fructibus. ipsis et pecunia ... subrogat ...
pignoris ... l. ... ...
... habeant ... nec hipoteca ...
pecunia redita ex benedict. fructuum l. quatuor ...
... hac notare ...
... Vid. ... ... de ...

n.º 5.

[illegible] prima [illegible]

n° 58 et sequentis 62. [illegible] pag. [illegible]
[illegible] lib. 8 [illegible] 26 Collan. lib. 3.
cap. 4. [illegible] Amaior [illegible] de [illegible]
[illegible] 1 pare. [illegible] 8 n° 11
[illegible] ind. [illegible] 25 [illegible] ex
n° 5 [illegible] [illegible] finit
n° [illegible] e tractatus an
[illegible] D. D. Joseph
[illegible]
[illegible] per
petuum [illegible]
[illegible]

[illegible]
per
tinus.

[illegible] et honorem domini nostri Jesu Christi
[illegible] Matris [illegible] cui [illegible]
[illegible] D. [illegible] Ant [illegible]
[illegible] D. [illegible] dedi
huic [illegible] idus Martii hora
10 ante mer[idiem] [illegible] in [illegible]
[illegible]
[illegible]

FINIS Capitis 3.

Cp. I. V. De Foro agricolae et prohibita sumisione ad alienum

Tribunal ad D. l. 25 § A
et ad leg. 28 Periculo
que sin embargo:

35.

Ad hoc [illegible] tractant Coll. lib. 6
c. 6. Ignatius del Villar d. [illegible] 26 cu. A. Pati. diff. 79. cu. A. Part.
[illegible] 9 q. a 27. et alias [illegible] communis [illegible] sententias et resolutiones [illegible]
[illegible] bona [illegible] pace dixerint [illegible] facile [illegible] assentior quare [illegible]
forensi dicitur [illegible] docebo [illegible] monendum esse agricolas de
[illegible] quiete et [illegible] ab opere rustico abstrahi
[illegible] extra [illegible] et [illegible] nec momento [illegible] temporis [illegible]
fieri [illegible] a gleba debeant dimoveri l. Colonus 15. C. de agric.
[illegible] quare inducitur fuit in [illegible] naturale [illegible]
renuntiare [illegible] summitere a [illegible] jurisdictione. l. no [illegible]
Corregidor [illegible] mas cercano [illegible]
[illegible] el Corregidor [illegible] a casa [illegible]
[illegible] Cremona [illegible]
cis territorio [illegible] sumisio [illegible]
deri interdicta [illegible] e 28 [illegible] que sin embargo de le
[illegible] sumisiones [illegible]
[illegible] suo domicilio [illegible]
[illegible] agricolas [illegible]
[illegible] Dedit [illegible]
[illegible] jurisdiccion [illegible] 17 [illegible]
[illegible] domicilio sino en otra parte [illegible]
[illegible] sumitant a[illegible] jurisdicioni [illegible]

quae [illegible] sumissio facta fuisset in foro Originario [illegible] in foro [illegible] jure Communi habent [illegible] [illegible] [illegible] [illegible] abiens 15 § [illegible] de judiciis [illegible] 1° § [illegible] eod. n° in 6. [illegible] 32 [illegible] partis 3. [illegible] solutionis [illegible] delicti [illegible] aliis multis Causis quas [illegible] Carb. ind. [illegible] [illegible] Cariel. de judi. 1° tom. [illegible] 1° disp. 2. [illegible] incredibile est principes [illegible] [illegible] derogatione speciali [illegible] derogare [illegible] quando 35 [illegible]

Ex quo 1° [illegible] liquido deducitur [illegible] Universitatis [illegible] matriculado ex tempore conforme a [illegible] et scholasticos [illegible] [illegible] jurisdictione [illegible] [illegible] jurisdictionis [illegible] ordinariae [illegible] Politicae [illegible] 10 [illegible] 12 n° 8 [illegible] politicae [illegible] 8 n° 214 [illegible] quicentario [illegible] dist. 129 n° [illegible] D. [illegible] de regia [illegible] [illegible] territorium [illegible] [illegible] quo [illegible] [illegible] [illegible] [illegible] [illegible] privilegio [illegible] [illegible] [illegible] habita [illegible] [illegible] parte 1. 7 tit. 51 partit 2. [illegible] 19 et 20 n° 7 ib. 1° [illegible] [illegible] [illegible] in d. tract. p. 6 [illegible] de jud. 1° tom. lib. 1. tit. 1° disp. 2. n° 6. [illegible] de foro studiosorum. [illegible] [illegible] jurisdictione in [illegible] cred. 1° [illegible] n° 51: [illegible] sit [illegible] intra limites [illegible] [illegible] scholasticos [illegible] [illegible] privilegii [illegible] [illegible] Cancelario [illegible] [illegible] Scob. ind. tract. de [illegible] regia [illegible] 39. [illegible] [illegible] [illegible] obtendisse [illegible] privilegium [illegible] jurisdictione scholasticorum [illegible] [illegible]

2° deducitur [illegible] jurisdictione [illegible] [illegible] Scholastica in causis spiritualibus [illegible] decimarum [illegible] [illegible] [illegible] jurisdictione [illegible] [illegible]

[illegible] 3.

[illegible]

De interdicto conmertio Prodigis = Brebis selectio ad leg. is cui bonis ff. de = Verbor. oblig.

Auctore D.D.D. Josepho Ferdinandez D Retes in salmanticensi academia meritissimo in vespertina cathedra legum interprete anno Dni 1657 = pridie idus Marij. =

N. 1°

Prodigus filosophico ex stricta significatione est. q. ultra substantiam suam expendit. ut dicetur in prefatione numero 3. Veloci[illegible] Vero. q. ut extrinsecus ex illi cemus prodigus dicendus erit y dat q. non oportet, [illegible] [illegible] [illegible] q. non oportet veluti Pthenon. Menilius [illegible] [illegible] ad [illegible] et [illegible] per prodigalitatem [illegible] in qua [illegible] [illegible] [illegible] apud Athenas lib. 4. [illegible]. Quibus non oportet, [illegible] Histrionibus, Mimis, Ministris Gulae et libidinis [illegible] depingit. Cicero. lib. 2 officior. post. Aristot. quem plerumque sequitur lib. 4. ethicor. c. 1. cum alijs ille apud Horatium lib. 2. satyr. 3. insanijt veteres Statuas Damasipus emendo. et probe mediis hijs versibus =

Nunc age luxuriam. et Nomentanum arripe mecum.
Vincet enim stultos ratio insanire [illegible]b
Hic simul accepit patrimonium, ille talenta
Edicit piscator [illegible] pomarium [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] cum ijs [illegible] [illegible] [illegible], omne macellum
mane domum [illegible] &c.

a. [illegible]
b. [illegible] dignos.

c [illegible] Rome le gebant [illegible] Capedarij.
d. [illegible] habitabat

1.

ide de Mario lib. 1. satyr. 2. et alij pass. boni note scriptores, Heliogon: tee ut Caligula et Nero, addo Helogabales apud Lampridium et alia idgenus monstra potius quam homines. In Caligula autem sub. Mamurie nomine se invexit Catulus in Epigramate in illud q. Decuite ... sufficiat. Multa autem cumulant Pater Mariana lib. 1 de Regis institutione cap. 7. Dom. Solorzan. Emblemat. 84. n. 22. Bobadilla in politic. lib. 3. cap. 5. ex n. ... addenda ... politica Barclaius lib. 1. Argenidis.

2.

restraendo.

Quicumque ... qui superabundet in retinendo non servato fine et modo dicto, minusque decorum ... Cura ... diligenti ut post Philosophos loco sup. citat. docet Angelicus Praeceptor. 2. 2. q. 119. artic. 1. ad 3. quod expressit Ulpianus Fr. in l. 1. de Curator. furios. illis, ubi, qui neque ... neque modum habet expensarum, sed ... bona sua dissipando profundit. hoc vitio affecti non debent permitti rerum suarum administrationi duplici ratione naturali et Civili; Civili, quia interest reipublicae ne quis re sua male utatur § ... et hoc tempore insistit de his q. ... sui ... alieni juris: ex malo enim usu rei Capias et exegetate rapine, et novitates eueniunt ut inquit Plinius in laudatione Trajani et habetur in l. 1. § 4. ff. part. 2. et ... Panegiristas anonimo Solorzan. ubi sup. n. 20.. naturali dicta, quia tales insani sunt, aut male sane mentis, mediante deliberatione in futuro ... dendo ut rata haberi debeant quae ab ipsis gesta sunt. Iacinto ... lege docemur prodigos promittendo, sive administrando nec jure naturali obligari, quod per hoc argumentum duncitur. Si prodigus promittat, et fideiussor ... dat, fideiussor non obligatur ut hic dicitur: § ad fideiussoris obligationem sufficeret naturalis oblig. ex parte rei principalis, l. fideiussor 16. § fideiussor accipi de fideiussor: ... ne naturalis obligatio nascitur ex promiss. prodigi, ut omnes Classici docent inserenti =

3

Nec obst. ... Ulpianus in l. Marcellus 26. § de fideiuss. ibi dicitur fideiussores intercedente pupillo sine tutoris auctoritate obligari aut ... obligari; nec ... fideiussori ... mandati actione ... respondeo ... Marcellus ... loqui de ... pupillo ...

ut cumque

ubicunque, p. deficeret Obligatio sine tutoris Curatoris v. autho-
ritate: et tunc supponit etiam fideiussores teneri Optimoquodam
jure q. Ubi Obligatio principalis datur fit accedat fideiussoria
mechanicè extra ipsa et ex alienatione pupilli aut pupillum
sine tutore Obligari l. 3. §. pupillus 4. cum seq. de negotijs gest. l. furio-
sus 46. de Obl. et act. et hic est Casus in quo cum Obligari sine fide-
iussor pupilli accedere potest. Ceterum ipsa Obligatio fideiussoria n. parit
q. l. Mandati actionem; q. mandare non potest ut pro fideiubeatur; hic enim
esset Ibus eum diceremus ipsi prohiberetur. ita etiam Coronitus tuus in l. si a reo
70 §. si a tutore eodem tit. de fideiussor. q. petit eundem Casum. quem inveniendum
etiam ita contra sentient. Cujacius, Donellus, et Gizarius hic. et lo. la. i. n.
Emptor tit. de Ihend. Empt. in prelud. n. 81. Caldas Pereira
in l. si Curatorem C. de in integr. restit. Ibo n abinimis n. 23. et lo.
quare aliquando. Anton. Faringius de fideiussor Cap. 5. art. 55. Pich.
in §. fideiussor 10. exn. 14. Inst. de inutil. Alias solutiones re-
fert Nicolaus Genuas latissimè in lb. leges conciliatur. pag. mihi
589. in q. re tolendus n. in meros.

4

exque interim Deus applica factos
n. Romani juramento: q. juramentum requirit Veram veritatem et just.
judicium eius q. jurat Cap. et si Xpus Cap. Veritatis extra de jure juran.
Pacium aut Caret judicio et natal. fundam. Veritas, et in admi-
nistratione rerum furiosi Iparati l. furiosi 40 de reg. jur. q. patri-
monij furiosus exitus facit l. hig. 12. §. Ule. de tutor. et curat. datis
ab his, Unde ob defectus judicij religione juris jurandi n. ligatur,
que est Omnium Opinio quam tenent Bartol. Bald. Castrens. Alex.
Jasom Alciatus hic. Ant. Gom. 2. tom. Varior. Cap. 13. n. 32 joann.
Gutierr. de juram. Iformat. 1. part. Cap. 52. exn. 4. Caldas Pereira
n. 24. Covarr. in Cap. quamvis pactum 2 part. §. 4. n. 8 Farin. lib. 2.
Iterum. q. 65 in 1. Jterum. et alij apud Barbos. in auth. Sa-
cramenta puberum n. 6. C. si adversus Venditionem.

5.

Interim etiam testamenta
V. Codicillos applica facta, nullius esse momenti l. is cui bonis 18.

q. gett. facere poss. §. ite[m] p[ro]digo instit. q[uo]m[odo] e[st] permiss. facere tt[estamentum]. l. 13. d. l. 1. part. 6. q. tt. 2. juxta sententia voluntatis [illegible] l. 1. cod. [illegible] teste[illegible] mener. instit. de testamentis; qua p[ro]diges destituit q. adeo vere e, ut haec facta ad pias causas valeat, q. deficit in radice voluntatis [illegible] qui similis est., docent Richard. luculenter ind. §. ite[m] p[ro]digus aquo tr. in roe dicentis, Menchac. de successionu[m] Creatione §. 13 ex n. 58 Spino in speculo testamentor. 2. part. rub. n. [illegible]. Pater Molina de just. et jur. 1 tom. tract. 2. disp. 237. in p[rin]c[ipi]o Hec o[mn]ia abrogare voluit Imperat. Leo Philosophus novel. sua. 39. sanciens q. jus romanu[m] ut sustineretur p[ro]digi tt[estamentum] in quo usq[ue] huc sano judicio velut si necessarios sibi heredes fecit, verga [illegible] substantia[m] excenare. Quia tamen hoc plenu[m] e[st] periculi et litibus occas. prebens cu[m] semper quaerendu[m] e[ss]et an saniter, vel insane p[ro]digus testatus fuisset; multisque possit testari casus q. recti moribus p[ro]diq[ui], e[ss]e: eoque devenitemus, ut [illegible] omnino decedere illi libera[m] tt. factione[m]; qua[m] subjicere [illegible] decaptationibus cu[m] judicium fuit Leo ambitiosus immutandi et corrigendi jus romanu[m], ... plerunque in felici exitu; adeo ut eius novella tanqu[am] regimine innutilis ab ipsis Greci[s] [illegible] recipientur, notante Cujatius. 17 observ. Cp. 31. Hilid. ad Donel. lib. 26. Cp. 2. lit. C. quare de hac novella parti curandu[m] e[st] quantu[m] eius rationem habeant cu[m] insanit. et O[illegible] ad Donel. lib. 6. Cp. 5. lit. O. Unde cu[m] p[ro]digus n[on] posset facere tt[estamentum], nec [illegible] in eo testis adhiberi; sive in pena, ut illa [illegible] a sellas ad fulgales mores redeat, in quo admiror doctrina[m] Richardi ind. §. ite[m] p[ro]digus; sive q[uo]d n[on] satis sani judicij reputetur ut tt. authoritatem posit facere, ita videnti indicasse Duaren. ad tt. de tt. Cp. 6. Donel. [illegible] lib. [illegible] Cp. [illegible]

6. Idemq. dicendu[m] erit de o[mn]ibus [illegible] p[ro]missionibus, donationibus obligationibus aut alienationibus tt. a p[ro]digo factis inter vivos. l. 5. 28 §. 1. de pact. l. certi [illegible] §. [illegible] si [illegible] 7. juncto. §. 5. de reb. Cred. l. [illegible] 125. de [illegible] de tutor. et cur. dati. [illegible] nunc operosius erit indagare q[ui] censeantur p[ro]digi juris censura[m] hoce[m] [illegible]

et digniter

Omertio p dig ū =

et difficile illud dignoscere q. facile evenit in furore, et aetate
Cingeri quae ante Oculos versantur ut Cas judicio observat Gual.
ad Donell. 12 Cp. 22. lit. F: nemo enim mortalium adeo prudens
absolute pervenit ut aliquando res suas minus sapienter tractet,
et nemo adeo insanus est ut quandoque sibi utilis eis non posse esse, cone
di notet. 39. Cuius ... Videtur mihi de summo ...
ab. Oratio lib. 2 sat. 3. et citat Philipp. 3. Vbi agit de Juridico
... Certum est leg. 12 tab. mentio q. prodigo fuisse interdictam
rerum suarum administratione: ... prodigus ...
... non
potuit ... necessarium decretum judicis q. declararet illum
prodigum: ante q. quantum ad ... prodigus sic, liberam rerum
administrationem retinet. hoc indicant ... in §. item
furiosi inst. de curatoribus §. item prodigus inst. ... perm.
facer. ... et alij in ... mentio sit interdictionis ad
ministrationis bonorum, adeo quidem ut ... ante inter
dictionem factam et quaevis alienatio teneat, ut est ...
... et Omnes Classicorum ... excepto ...
quos tenent Gomez d. Cp. 14. n. 31 ... d. Cp. 32 ... An
dreas Fachin. lib. 2. ... Cp. 6 4. Pich. ind. §. item prodigus
... in d. l. i curatore ... ab similis ... §. que ...
... in l. §. ... part. §. not. ibi ... 4.

7.

Hoc ipsum jure Rom.
fundatur ... §§. §. ... de administr. tutor. ... ubi ...
prodigus manet tutor: adeo ut ... tutor teneatur non permittere illi ...
particularem administrationem: ... ante interdictionem nec facultatem ad-
ministrandi Caret, nec ab alienatione ... remotus est; ...
non est necessaria Cautela ... Tutoris, ...

7.

6

Solemnis commentarius ad tt. ff. de re judicata = lb. 42 tt. 1°

A sapientissimo D.D. Joseph de Zamora

Dignissimo ac meritissimo Cathedratico in sua propria cathedra Decretorum in Salmantina Universitate die 19 mensis Octobris anno Xpi 1655.

1°

Lusis [illegible] [illegible] videlicet in quadam rei iudicata [illegible] [illegible] in [illegible] res iudicata dicitur que finem controversiarum pronuntiatione iudicis accepit [illegible] condemnationis absolutionisque [illegible] que descriptio [illegible] omnibus interpreti [illegible] dignissima [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] inexplicabilis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] indesignabilis omnino [illegible] id [illegible] [illegible] res ipsa iudicata

inde [illegible]

iudicata lib. 7 tit. 1

indesignabile omnino videri, id est quod desi[illegible]
ratione iudicata indesignabili manet [illegible]
[illegible] duo litigant [illegible] iudi
cia [illegible]
iniasa definitiua sit. quod per iudicis pronuntiationem [illegible]
[illegible] in primis [illegible] principale
idem [illegible] litigata per iudicem definitiua pro
nuntiatio [illegible] quamuis [illegible]
[illegible] obligationis [illegible] no
uationem in iudicio [illegible] aut
[illegible] denouat [illegible] quidem scribit [illegible]
[illegible] rei iud. id tamen [illegible]
[illegible] quatenus ex quasi contractu [illegible]
[illegible] per [illegible] noua iudicati actio [illegible]
[illegible] demnatus [illegible]
[illegible] l. [illegible] curat [illegible]
[illegible] Cred. [illegible] iudicati actio
ex definitiua [illegible] oriatur [illegible] ut pristina actio
[illegible] noua iudicati
actio [illegible] actionis in iudicium deducta [illegible]
[illegible] adeo ut quilibet post [illegible] definitiua
et sententia iudicata [illegible]
[illegible] Credi[illegible] [illegible]
[illegible] denouat. [illegible] solet [illegible] de rei iud.
ibidem Pet. Fab. Ant. Fab. lib. 16. [illegible] [illegible]
Brisson. lib. 2. de solut. et denouat. [illegible] lib. 15. [illegible]
tar. [illegible] 20 Duaren. ad eundem tit. [illegible]

2.

[illegible] iudicata [illegible] definitiua [illegible]

-ynet controversiam et iudiciariam litigantium contentionem
quam iuris auctores a prio vocabulo litem appella
tis solent l. Capitaneus 8 § 1° ff. de in lit. iur.
de Vinea 22 ff. de acq. hered. l. 3 § in hac 2 ff. inde
dati leg. d'Aff. Ingeg. a Valencia ad nunc.
C. de in ius vocando quoniam ipsa lites a lege recipiendae
fiscan. lites et iudiciarium litigantium controversias per
judicii pronuntiationem finem accipere et quando
nunc ferri inciriruntur. eh et ut Ost. ut litigato
ris alicui controversia decedere. l. qualem 12 § 1 ff.
de minor. act. l. 1 ff. de re iud. cap. ex rei iudicatae
atque in summ. quaemquam nec utraque iudicis pronun
ciantis iurisdictio per legitimam suam pronuntiationem
extinguitur. iudex §§ et Rocch. Veruntamen cum
ambis duobus predictis respectibus litem confirmaris
iudicari. tamen tam controversia finem in pronuntiatione
dati dederunt et ex quo Jasoni ... ff. de Rocch. Jenu
... meler. ... Sarmiento lib. 2 select. c. 13 n. 51
nihil minus tamen incredibile nobis videtur iure valere
a tali longiori re iudicata terminale: cum certo sit
litigantium controversiam per iudicem definitivam sententiam
... extinguitur quamquam per appellationem
remedium. Tunc definitivae sententiae quaestio
aut extinguitur ... opinione praesertim
Ciatii ... et quaestionem Paviniani in l. pos...
dum § § 1° ff. ut legator. noie. q. molestier. vel
... in l. § ... Petr. ... in l.
... § ... de nigriotatis. cod. ...
... opinione sententiae auctoritas ...
... ita ut principalis controversia ad se curvatam

/ ... /

apellationis instantia de ubbaes l. sique §. hinc 4. ff. de in integrum restit. 41. l. 2. §. fin. de gen. l. ...

... nominari ... apellatione benigne ...

... lib. 1° extra de ... iud. ... 2. 26

... 3. part. ... in ... Cap. 23. ...

... Cap. 12 n° 18 ... Pereira ...

... 3. C. de in integ. restit. ... pergquod ...

... lib. 28 ad Donel. Cap. 4. lit. ... neque ...

... litis contestatione ... per definitivam ...

... res judicata etiam eo tempore ...

nominari ... apellari adhuc ... de ...

... apellatio adhuc pendet l. ... 14.

C. de apell. ... 11 C. de transact. l. ...

23 § 4°. ... ff. de ... l. ...

50 § 1° ff. de ... alii ...

... 8. ... lib. 2 ... Cap. 35

n° 2. Valenz. ... Cap. 1° n° 10: ...

... respondemus judicatam ...

... adhuc ... apellationi res judi

catae ... omnino male nominari ...

... Donel. & Sarmiento ...

... quatenus ...

iudicantis ... d. l. qua ... 10 § 1° ff. de

recept. arb. ... 55 ...

... Modestinus contra ...

... res judicata ... substantialiter ...

babile ... adeo ...

... ...

... res judicata ... definitiva ...

... judicis pronunciationis quoniam ...

n° 5.

inter rem judicatam et rem definitam, ita videtur differentia constituere, que inter litem et causam, inter finitum et finiendum intercedit, l. 1. in contro et l. singulis C. [illegible] de except. rei jud. l. quare, q. 3. l. [illegible] capt. [illegible]. Duaren. ad primam leges. l. 3. Valens. ad [illegible] l. 3. C. 1. n. 8. Thoman. de [illegible] juris [illegible] et l. 2. observationum [illegible]. [illegible] in 2. [illegible] quod. [illegible] fin. l. [illegible] § 1. n. 2. et 2. Jason [illegible] l. n. 8. [illegible] e causa efficiente, [illegible] jus [illegible] in [illegible] judicata [illegible] fin. extra de institutionibus l. [illegible] dicto [illegible] de lib. et posth. [illegible] per [illegible] modo sententia definitiva, [illegible] instrumentale agens, [illegible] Bartol. sentiunt Castrens. et Angel. [illegible] ubi [illegible].

1. Ceterum, ubi in hanc [illegible] ambiguitatem, quale quid [illegible] inter [illegible] [illegible] contrariis [illegible] rem judicatam a [illegible] definitam et ipsam definitivam judicis pronunciationem [illegible] judicii solemnitate transivit in auctoritatem rei judicatae, que [illegible] quamvis communiter recepta [illegible] tamen [illegible] adhuc [illegible] explicavit, quando sententia judicatae [illegible] scaliter judicata, ita ut [illegible] in tantum [illegible] [illegible] imponat. Verum etiam [illegible] ipsa tanquam [illegible] accipiat, [illegible] illud est indubitandum, [illegible] ipsam [illegible] judicantem esse per judicis pronuntiationem.

4.

posse iudicari, Cap. Cum dilectus 32 in fin. extra de elect. et cap. Cum inter 13 vers. Vero et eius sent. extra de sent. et re iud. l. eleganter 22 § 4° vers. Vero cum de ff. de condictione indebiti l. 3 et 4 iuncta [illegible] C. de execut. rei iud. [illegible] in prin. [illegible] iuncta [illegible] iud. [illegible] quitransitum [illegible] iudicii pronuntiatione [illegible] tunc [illegible] appellatio a definitiva [illegible] fatalium [illegible] pro [illegible] pronuntiat [illegible] quomodo et [illegible] iudex [illegible] appellationis [illegible] appellatio ne est definitive pronuntiat [illegible] appellationis [illegible] principali negocio [illegible] de [illegible] tanquam adhuc dubia et litigiosa pronunciata [illegible] 57 § 1° ff. de adm. tutor. [illegible] in [illegible] 11 § [illegible] ff. ad leg. Falc. l. [illegible] 97 ff. de leg. 3. [illegible] § 1° ff. de [illegible] notabiliter [illegible] quamvis a [illegible] iudex appellationis [illegible] principali [illegible] absolutione [illegible] pronunciare l. [illegible] creditor 102 § 1° ff. de [illegible] l. Cum [illegible] 20 ff. iudicatum solvi [illegible] in l. eo 6. C. de appell. Fab. lib. 4 observat. [illegible] 8 [illegible] 99 et ibi [illegible] lit. C.

n° 5. [illegible] duplici pronuntiatione [illegible] appellatio [illegible] pronuntiat [illegible] litigiosa [illegible] atque per iudicium pronuntia[illegible]

dionis judicata est ita. [illegible] ita [illegible] sub[illegible]
[illegible] debuit. Cod. quidam primo [illegible]
[illegible] pronunciatione [illegible] ita est certe
[illegible] . tract. illarum quaslibet [illegible] pronuntia
[illegible] habeat judicatam [illegible] tunc [illegible]
dubitabiliorem [illegible] pronuntiatur [illegible]
exponamus [illegible] nobis est [illegible] illa [illegible]
judex [illegible] appellatione [illegible] si quid
[illegible] [illegible] concludenda [illegible]
[illegible] quomodo [illegible] judex. [illegible]
[illegible]) [illegible] quidem [illegible] tamen [illegible]
necessaria [illegible] pronuntiare [illegible] et iudex
atque executioni mandandae [illegible] quod dicitur
docuerunt Philippus Franc. in [illegible]
[illegible] n. 96. [illegible] de appell. q. 17 limit. 17
n. 8 [illegible] tract. [illegible] lib. 1 [illegible]
17 [illegible] q. [illegible] ordinaria a
pellationis [illegible] interpositae [illegible] desertio
interposita [illegible] expressa [illegible]
gatoris frequentius [illegible] primis [illegible] aut
deserta [illegible] sententia [illegible] iuxta
[illegible] litigare [illegible] aut [illegible]
[illegible] iure [illegible]
[illegible] tanquam ab [illegible]
[illegible] in l. [illegible] 2 [illegible] Ult. C. de tem
poribus et reparationibus [illegible] licet [illegible]
[illegible] pronuntiat [illegible]
[illegible] directe [illegible] nisi appellatio
[illegible] quod [illegible]
[illegible] quomodo [illegible]

judicata ... 1°

Et de apell. im̃ quidem tamen atque in necess.ᵃ dequa nullitate pronuntiat. adeo ut supplicationis ut vere et verba illa ipsa dijudicauerit ita l. temp. 2 vers. ult. et l. cum anterioribus §. §. illud eod. 4. ut. a quam quasi arbitrio C. de temporibus et reparationibus verb. Vers. Vi et potestas sententiae quamvis sententia judicata, nihil ominus tamen in se ea pronuntiat quae expresse importat. Vera est et ea quae ... necessaria, et sequentia imbibuit l. 3 Pomponius in Ac. § ... hic ff. de curator. i. simul 15 ff. de except. rei judic. l. 1. § quod 4. ff. quod ... Grauarius disceptationes forens. tom. 3. Cap. 445. Azeb. in l. 22 tit. 6. lib. 3 recop. Carleb. tractat. ejus lib. 2 tit. 3. disp. 9. nᵒ 6.

Nº 6.

Ut ... Rursus est ipsa clarius

habetur ex ... clausulis guarentigiis quae ... deducitur et ex viribus rei judicatae liquido dicitur probare rei ... actionis tacitae ... ex judicata, sine sententia, ad hanc fere vim impone clausula quae a tabularii scilicet in publicis instrumentis: damos poder atodas y quales quier Justicias ante quien la presente carta fuere presentada para que nos lo ... nello compelido ... apremiar ... executor en nuestras personas y bienes asi ... cumplida mente Como si contra nosotros fuese dada sentencia definitiva por juez competente y la ... por nosotros consentida y pasada en cosa juzgada ... Parl. in prax. illorum l. 2. a part. ... n. 10 ... Parl. ad. lib. 2. rer. quotid. Cap. ... amplia. l. legis Toletanae Covarr. lib. 2. Variarum

[illegible] Gem. Diaz reg. n. 44 [illegible] clauus [illegible]
[illegible] inter [illegible] [illegible] in cuius
[illegible] rei iudicatae [illegible] partis [illegible]
[illegible] tenui [illegible] [illegible] Cujacius
[illegible] 36 [illegible] Tr. [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] ei [illegible] hanc eandem [illegible]
[illegible] [illegible] tempore [illegible] [illegible]
[illegible] [illegible] de apell. [illegible]
[illegible] [illegible] [illegible]
[illegible] demonstremus [illegible] de [illegible]
a iudice [illegible] [illegible] de meritis [illegible]
[illegible] [illegible] [illegible] iudicatam
[illegible] [illegible] [illegible] [illegible] iusta
[illegible] [illegible] [illegible] [illegible] rationes [illegible]
[illegible] [illegible] formula [illegible] [illegible]
[illegible] [illegible] administrator [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] leg. [illegible]
[illegible] de [illegible] [illegible] dubitari [illegible]
[illegible] [illegible] de meritis [illegible] [illegible]
[illegible] [illegible] iudicatam [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] in [illegible] numero [illegible]
[illegible] [illegible] [illegible] [illegible] Cuius [illegible]
[illegible] iudicij [illegible] transit in auctoritatem
[illegible] iudicatae [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] ad [illegible] [illegible] at
[illegible] [illegible] de meritis [illegible] in [illegible]
[illegible] inst.a [illegible] [illegible] [illegible] [illegible]

judicata

Ubi accuvierda est [illegible] Donel. Duaren. et [illegible]
accentorie [illegible] q. arbitrantur controversiarum
pluritatem idem Modestino [illegible] esse [illegible]
eodem judicio plures controversias [illegible] incidenter
debeat necessario judice [illegible] pronunciare de [illegible]
dicam [illegible] vid. in hoc judicio 27. [illegible]
mil [illegible] l. [illegible] 19 §. 1° ff. de re jud. [illegible]
l. 2. et 3. C. Theodosiano de sententiis ex periculo
recitandis. Ceterum quominus hanc interpretationem
recipiamus [illegible] [illegible] est lib. 23. observat.
Cap. 1° et lib. 12. Cap. 2 [illegible] lib. 27 Comment. [illegible]
[illegible] Cap. 1. lit. B. [illegible] obreptandum est [illegible]
[illegible] ad Modestinum interpretatione solida illius
questionis resolutionem inferri in qua doctores
disputant quaerentes [illegible] 3ª [illegible] judicatae judicii
actionem [illegible] ut executioni mandetur [illegible]
judicatum [illegible] per superiorem confirmata [illegible]
confirmatoria in qua questione tenendum est [illegible]
judicati actionem [illegible] quia ipsa [illegible] est [illegible]
sit in authoritatem rei judicatae ut [illegible] principii
[illegible] [illegible] [illegible] [illegible] 32 C. de
transact. [illegible] [illegible] [illegible] rescindi [illegible]
[illegible] [illegible] [illegible] ut bene [illegible]
mentantur [illegible] et [illegible] [illegible] [illegible]
thoritas [illegible] [illegible] [illegible] appellationis
[illegible] recte inferri [illegible] [illegible] doctores
confirmata executionem mereri. [illegible]
lib. 2 observ. Cap. 3. [illegible] Pet. Greg. lib. 6 de appell. Cap.
11 Couarr. in [illegible] Cap. 27 n° 1. [illegible] lib. 28 Com-
ment. Don. Cap. 1° lit. [illegible] Cap. 9 lit. l.

Tandem adversus

[illegible] interp[illegible] graviter [illegible]

[illegible] inferioris post superioris judicis

[illegible] judicii inferioris post superioris judicis

pronuntiationem [illegible] judicatae [illegible] superior

judex [illegible] revocet inferioris judicis

pronuntiationem [illegible] revocat [illegible]

[illegible] examinare [illegible] judicatae ita [illegible]

pronuntiationem acciperet [illegible] infero

rii judicis revocata [illegible] rei judicatae autoritatem

habere [illegible] quamquam [illegible] revocatio [illegible]

[illegible] judicii [illegible]

alia pronuntiatione [illegible] rei judi

catae [illegible] neque [illegible] argumen

[illegible] adversus Bart. et Parisi. [illegible] Batius a

[illegible] ut breviter [illegible]

omisso Jasone [illegible] et [illegible]

[illegible] judicii [illegible]

[illegible] revocatoriae [illegible] in prima sent. absolutum

[illegible] rei judicatae [illegible]

[illegible] accipere [illegible] quidem [illegible] ab alia su

perioris judicis pronuntiatione: quippe [illegible] in

[illegible] potius [illegible] juxta [illegible]

[illegible] sent. [illegible] praesumptione suam

[illegible] stabiliente: ita ut [illegible] probationem

[illegible] res judicata 207 ff. de reg. jur.

l. ingenuum 25 ff. de stat. hom. l. si servus 53 §. 1°

ff. de leg. 1°. [illegible] praesumptionem contra

[illegible] tract. de praesumptionibus in [illegible]

[illegible] n° 3. Menoch. de praesump. lib. 1°. q. 6. n° 56.

[illegible] quos secuti [illegible] ostendimus.

et rei iudicata

... de iuris. tit. Cum ... ff. de hiug. ...
quoniam in parte et scripture ... potentiam ... habentis
... inaequaliter ... iustitia et violentia
... ut doctores ... remanent in ...
... positione ... in admin ...
... animadvertere ... ff. doct.
... ingenuum 25 ff. ... hom. et hic doctores ...
... iuris et de iure ideo ... quia ...
... sententiae ... amplius ...
... statutum ... ratione ... in admin.
... ut ... definitur ... dispositio
... aliquid ... et ... tanquam ...
... habentis ... Evidenter ...
Ex d. l. ingenuum 25 et d. l. ... 6. ...
et ... 30 ...

Caput 2.^s De non retractandis

Sententijs transactis in authoritatem rei iudicatae

Etiam ... instrumenti noviter reperti.

n. 1.

... iudicatarum tanta
e authoritas ut neque ... instrumento ...
... iniquitate definitive sent.
evidenter ... retractari, emmendari, aut mutari
... dummodo sent. definitiva in authoritatem
rei iudicatae semel transierit. l. imperatores 35 ff. hoc
tit. l. sub specie ... eod. tit. l. cum ... 27 in fine
ff. de ... rei iud. ... quando ... in ...
l. sub ... 19. ... de transact. ... 21 ...

hoc tit. l. 19. tit. 22 partit. 3. Expornant Antiquiores
in a[...] juribus Donel. lib. 27. Iment. Cap. 1. et lib. 24
cap. 19. Faber. lib. 1. Brouer. cap. 52 Cujac. ... Sequenti Cuj.
lib. 18 observat. cap. 35. et in paratitlis ad tit. C. de re jud.
Salic. in l. 1. C. quomodo ... remedium Cornas. in l. ad
monendi 3. ff. de jur. jur. Farin. in prax. crim. tom. 2.
q. 11. n. 8. Greg. Lop. in l. 19. tit. 22 partit. 3. Valenz. ad
Inreg. tit. 3 cap. 6. n. 2 Set. Barb. in l. si pretor 75. ff. de jud.
Carleb. lib. 2 de jud. tit. 2 disp. 1. n. a. ... hanc autem
veram judicaverim in immutabili authoritate, usque
ratio ... aliquo doctore, ut in ... dicere
... Judex ... adhaerebat ... qualiter ... reperta
... de iniquitate sententiae manifeste appareat ad
... non ... verum etiam neque per in integrum resti-
tutionem post ... admitere, ut restitu-
ad integrum statum ... de causa principali denuo
cognoscatur. quod non obscure insinuare videtur ... textus
in l. Imperatores 35. ff. ... ... Herzinnius
ubi ... in ... 33. n. ... Donel. ubi supra.
... vidend. ... hanc autem recepit ... Decisionibus
... quae ... reddidit ... prox. n. 1 ... expresse
manus ... judex ideo posse ... ... reperta
adversus suam definitivam sententiam ... alio
... libello admittere. quod per ... definitivam sententiam ... functus
dicitur ... ff. ... in l. 2. judic. ... l. Paulus
... l. judex 55. ff. hoc tit. ... in ... de ... Decisione
... divi 27. ff. de ... hoc ... tertio ... ...
... in ... est ... quaestionem ... de ... ...
... instrumento ... ad ... judicatus ...
... alioquin juris ... ...

... B

28.

judicatae

cum inferiori iudicis quantitatis, in terminis eius, per authoritatem rei iudicatae non habent (de qua iure civ. allegata Diuini) non fuisse inductum, quando fuit iudicium [illegible] ... rei iudicatae authoritatem [illegible] habeat per [illegible] instantiam [illegible], et [illegible] non
[illegible] post [illegible] reperti mutare aut emendare sent.
[illegible] eius iurisdictio extincta est evidenter, per [illegible] a [illegible] (et [illegible] quaestione [illegible] [illegible] [illegible]
Doctores [illegible]: quin imo quaestio [illegible]
dicitis [illegible] quae rei iudicatae authoritatem [illegible] habeat
neque [illegible] de omni iudice [illegible] neque suo [illegible]
[illegible] successoris sui [illegible] sent. in rem iudicata transacta
praetextu instrum. noviter reperti retractandi [illegible]
sent. rescind. [illegible] sub specie [illegible] C. nov. [illegible]
19 C. de transact. l. [illegible] post. de [illegible]
[illegible] C. [illegible] revocare, quae iure in [illegible] terminis ab omnibus
[illegible] [illegible] acciunt, [illegible]
[illegible] [illegible] a [illegible] [illegible] recordandi
nimirum in supremis rerum iudicaturis [illegible]
[illegible] ut [illegible] finem [illegible] [illegible] [illegible]
[illegible] pronuntiat. iudiciali [illegible] [illegible]
[illegible] 6. [illegible] [illegible] [illegible]
[illegible] [illegible] l. 19 et 22 [illegible] [illegible]
[illegible] post sent. reperti [illegible] rei iudicatae [illegible]
[illegible] liquido [illegible] [illegible] retractari [illegible]
[illegible] [illegible] occasio ad eludendam rerum iudicatarum
authoritatem [illegible] [illegible] [illegible] 09
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

nec emo [illegible] ... ac [illegible]
... iudicantes ...
... reperta autho...
... 2 ...
... Doctores ... valent.
... d. C. 5. in ...

... 2.

... instrumenti ...
... auctoritate ...
... iudex ...
... reperti ...
... dei ... comparare ...
... instrum ... solutio ... facti ...
... 2.
... in ... ambulo ...
... in ...
... in integrum ...
... privilegij ...
...
...
Item est ut omnes ... in auctoritate ...
iudicare ...
... per novum instrumentum ... Item ...
... novi instrumenti ...
... in integrum ...
... in integro ...
tractari ... in ...
... rest. ...
... in integrum restitue. q. 12 ...

† 35. Ad primo ut. Quibi jas. vi Ult. Comm. ubi admonni
31 ff. de iur. iur. Duan. ad Donel. lib. 21. c. 7. lit. L. n.
Et ibi Aut. Barr. Summari 229. Cadit. Z in d. dubii tertio
§ 6 C. de transact. Ioann. Jani. de nobilibus glab. § 25
... lib. 1. de iud. tt. 1°. dict. n. 6. Verumtamen qui
Immunen Toto suo. n° 1°. aliaque modo committuntur ma-
ni fuisse in Italiane 14. per in integrum restitui rescindi
debere, ut illa semel transacta negotia ad pristinum sta-
tum revertantur ... principaliter atque de tribus
... tractatu ... permanent ...
... seu potius rerum iudicatarum relaxationem
... sub. ... L. deue iud. ... Urbis
Imperatori 35 ff. ... restitutio in integrum
adversus res iudicatas in ... privati manifeste ...
... sibi litigatori imputare debent ... dicta
... ... ut ...
... Donel. ... in ... sub ...
... transact. ... omnes ... secundi in n. 3. ...
... sicuti ... in n. 1. ... modum ...
modum ...

N° 3.

Nos autem in hac difficultate ... affirmamus ... dic-
tum opinionem, et arbitramur ... post ...
... debeat rei iudicatae ... in integrum restitutionem ...
ut ... ad ... ... restitutio ... principalis
atque ... restitui ... novitas reperit ... magistratus
... antea Condemnatur ...
... merito ... ... hic ... multi
... ... imaleri
... ... rei iud. in ... praeciter ...
... moritu ... ... que ... mortui filii

publicatum putabat ab ea succ. removeri, sicque
per [illegible] ab intestato locus accederet: Credebat tamen
in ob impuberis [illegible] substitutionem datum fuisse. Verumtamen tabulas
pupillares atque substitutionem nullius esse momenti:
sua assumptione [illegible] materiam fundabat [illegible] prin-
cipale [illegible] paternum [illegible] sine irritum erat: quocirca et
pupillare [illegible] et substitutum pupillaris [illegible] corruere
debuere, quia deficiente paterno [illegible] pupillare [illegible] deficere ne-
cessario [illegible] l. 2 § 1 l. si quando [illegible] ff. de vulgari et pupill.
qua inter matrem et pupillarem substitutum provinciae [illegible]
sententia [illegible] accepit qua judicatum est paternum
[illegible] [illegible] consequentem ut matre [illegible]
hereditas mortui [illegible] ad substitutum pupillare pertineant
[illegible] qui in authoritate rei judicatae transiit [illegible]
[illegible] inspectis [illegible] tabulis pupillaribus liquido apparuit [illegible]
[illegible] matrem substitutum esse putabat [illegible] quo
circa in judicio nobis hoc instrumentum producebat [illegible]
Tertull. Senat. [illegible] impuberi filij sint succedere mortui he-
reditatem ab intestato [illegible] § 2 inst. de Tertull. l. 1
toto [illegible] inde [illegible] utique matris ex novo
instrumento apud eundem [illegible] judicem agenti obstet ex-
ceptio rei judicatae [illegible] l. [illegible] ex Neratio respondit, exce-
ptionem [illegible] matri obstare, [illegible] extraordinario remedio
[illegible] matri succurrendum est idem cui omnes doctores [illegible]
[illegible] per in integrum restitutionem matri succurrendum esse
ut virtute instrumenti rescissa [illegible] de negocio principali
atque de viribus instrumenti [illegible] agatur, et quidem [illegible]
[illegible] [illegible] evidenter [illegible] matri [illegible] quamvis [illegible]
rei judicatae authoritate, eo itaque extendi ut mater [illegible]
[illegible] rei judicatae iniquitatem [illegible] jure impugna-

C

re tr. improbata prius restituet. ll. q. rescisa, ex illo Cap. edicti pretorij, siqua mihi r. cā videtur l. 1. §. ult. ff. ex qq. caus. maior. adinvra e mater vicit, in seguenti judicio, quo in 1.° victa fuit nimirum justa e causa restitutionis impetrande ex c̄tā edicti ignorantia probabili matris, q. bc: dus priore instantie sterlitersiadura berat ignorabat pupillarum tabularum scriptura, e us postea reperte ff. ubique restitutio in integrum est justa causa maioribus etiam 25 ann. sceditr. d. l. 1. § ult. ff. ex qq. caus maior. ignorantia autem facti alieni qualis e attenta tit. probabilis e. l. 2. le. §. 4. ff. de iur. et fact. ignor. l. qui in alterius 42 ff. de reg. jur. l. 1. §. sigs autem ff. de litinen act. que priu.

n.° 4

Huic autem tertiae opinioni nostre fundamentum e varie respondere conantur diversis Doctores probabilior autem solutio Faquinei e lib. 1.° Contro. cap. 51 et Antonij Fabij lib. 12 sedent. cap. 13 docentium idcirco in hac specie matrem post rem judicatam contra reperti instrumenti admissam fuisse, q. quamvis de eadem hereditate ageretur cum eodem adversario litigaretur nihilominus tamen causa proxima actionis et rei vindicationis prima intentio diversa omnino ab illa e quam in 1.° judicio proferebat: nimirum in 2.° judicio de causa tamquam ex tit. paternitatis, ut rupto ac lavato principali tit. pupillarum etiam cadere, sibi q. ab intestato vocem favente ex SC. Tertull: ceterum in 2.° inst.° n. de rupto tit. principali potius de irrito tit. pupillari perde se illa substitutionis pupillaris tractabat, que intentio diversa prorsus e. quam sola Ulpianus ipse insinuat ibi Tutorum de sive Una tantum causa rupti tit. eget: tamquam specialis causa sine mentu ex capitanti, atque sine ipse judicio auth[illegible]

fuisset judicatum recte ostie matrem repe... arg. l. cum in l. de quarum 12 cum duobus sequentibus. l. sicut 2 § si fundus ff. de ... 27 ff. de except. rei iud. Illustrissimus Carriatensis tract. de judiciis ... 2 = l. eis vero ... Fachinei ... ...

... ... matre in 2° iudicio diversa ... ...

... pupillaris ... per imitationem paterni ... ... instantia) ... pupillaris substitutio ... ... Marcell. exceptionem rei judicatae ipso iure matri obstare ... quippe quae ... vindicationis intentio adversus eandem ... ... personam in judicio matrem ... ... vindicationis ... ... exceptionem rei judicatae ... ... l. cum de ... 27 l. sicut 2 § ... l. 12 cum duobus sequentibus ff. de except. rei iud. et tamen manifeste docet ... principaliter ... ... pronunciatum fuit ... patris, incidenter ... erronea matris ... deducta ... pupillaris ... ... valide declarato ... ... pupillaris ... matris ... pronuntiatum ... ... Unde ... rei judicatae exceptionem in 2° judicio matri obstare, quamvis ... ... deducatur: quoniam ... ... matris ... ... atque ideirco ... ... matri ... exceptionem rei judicatae ... :

Deinde ... ... nec ... ... quippe ... falsae ... ...

in 1° iudicio de causa pupillaris substitutionis actum non fuisse, sed tantum
de viribus testamenti paterni: quinimo per expressum matris agen-
tis [illegible] 1° iudicio supponebatur Titium [illegible] de qua heredi-
tate pupillari [illegible] in tabulis pupillaribus substitutum
datum [illegible]: nec mater impugnabat Titium esse substitutum, sed tan-
tum [illegible] incidentaliter contendebat principale matris [illegible]
[illegible] ea intentione ut [illegible] pupillaris [illegible]
substitutio [illegible] facta caderet [illegible] locum haberet a l. 2.
1° ff. de [illegible]. Itaque per expressam matris confessionem quam [illegible]
[illegible] causa substitutionis pupillaris in 1° iudicio deducta fuit
ut patet [illegible]: [illegible] in 1° iudicio [illegible]
[illegible] falso supponebatur Titium esse substitutum [illegible]
[illegible] ut in [illegible] quam iudex pronuntiavit
[illegible] testamenti patris de quo mater [illegible] quam de pupillari
substitutione quam [illegible] mater supponebat pronunciavit [illegible]
[illegible] expresse [illegible] in l. [illegible]
[illegible] pronunciationis [illegible] in specie [illegible] ad hunc
modum concepta fuerit, pronuntiamus paternum testamentum [illegible]
nec proinde quae impuberis filii hereditatem ad Titium sub-
stitutum pertinere decernimus: et [illegible] quamvis [illegible]
mus in praedicta specie pronunciatum expresse fuisse super [illegible]
[illegible] substitutionis [illegible] quamvis [illegible] decideremus
[illegible] substitutionis pupillaris pronuntiatum expresse non fuisse [illegible]
expressa matris [illegible] abunde sufficienserat [illegible]
et re iudicata. Et in eodem articulo substitutionis habetur [illegible]
[illegible] quod [illegible] erronea [illegible] heredi [illegible]
[illegible] per [illegible] indicato [illegible] pronuntiatione
[illegible] Bart. in l. [illegible] 15 [illegible] Marcellus [illegible]
[illegible] pontif. et regia iurisdict. cap. 18 n° 15 [illegible] ibidem [illegible]
[illegible] per [illegible] matris in 1° iudicio supponat

[illegible]

iuris esse iustitiam; consequens videtur esse quod aut inter se iudicium
praeiudicium habeatur aut quod sine expressa pronunciatione idiam
tacite iudicatum censeatur l. 2. C. de ord. cognit. l. Titianus
ff. de except. rei iud. Cum eo, ex quo infertur a ratione contr. ind. l. 11 ff.
de except. rei iud. fateri oportet materiam de causa restitu-
tionis in 2° iudicio, agentem esse ipsum omnino in 2° iu-
dicio deducere, quod in 1° deductum erat quia illa inter utru-
mque iudicium differentia sola est, quam lex insinuat: quia scilicet
in 1° iudicio agebatur causa fructuum tutelae paternae principa-
liter, causa autem pupillaris tutelae per maternum feud. super-
onebatur: in 2° tutelae iudicio de causa pupillaris tutelae
civiliter agebatur; de causa autem paternae nequaquam direct
tractabatur: proindeque cum eadem prius causa in utroque iudicio
tractaretur oportuit materiam prius intentatam in integrum
restitui. quae rescisa erat 2° iudicium venire inquit
virtute instrumenti noviter reperti erronea sua iterum
et iudicem instrueret vestigia retractaretur: et ita etiam verum
censemus quousque alter meliora reponat

Aurelius Ocusio

Ita quod licet vere iudicatam auctoritatem esse patrimi
ratione ut virtute instrumenti noviter reperti sententia
per iudicium quam ambiguum restitutionis in integrum rescindatur ut ea
rescisa negocium ad pristinum statum redditum de causa principali ex
integro audiri queat modo etiam iusta ignorantia et iusta alia causa
ad impetrationem restitutionis ex causa edicti intercedat elegan-
tissime probatur ex specie mariti avunculi quae adducitur ex d. l.
in princ. ff. de re iudicata cum. iuncta l. Argentarius 10. § 1.
ff. de edendo ... et aliorum. Domenicus Cazde
Victoria ... Coxrieges ... potestatem ... retractari ...
infantem edictum habere ... quacumque persona ...

C

ubicata lib. 2. tit. 1°

...ndum sit quominus adversarius suus sese judicio sistat, si forte ... adversarius liberatus sit ... actione temporali tenebatur ... pro ... in d. ... 18 ... ibi ... lib. 20 ... Faliet. ... de acquir. possess. n° 1. ... si persona illa cuius dolo factum è ... actionis adversarius se judicio sistat ... neque solvendo idonea: ... contra personas ... Vlt. in. ... de Dolo ... actione temporali ... recurrere, ut actione temporali denuo ... actione ... personali ... debitoris ... que ... in simili ... habetur etiam in ... 13. § Vlt. C. de jud. ... de dolo = Quo principio supposito ... deducitur ... argentarius 10 ... de edendo ... argentarius ... in Kalendario suo ... Creditori meo ... meo nomine ... ad paginam ... meam ... actiones ... pecunia ... meo nomine ... mandato dedit; ... ego nullum aliud ... combinationis ... haberem ... argentarius ... publica erat fides ... ad instar ... in d. ... de edendo ... 27 § 1° ... scriptura ... lib. 10 ... ... lib. 2 ... Salmed. ad ... 1° ... 18. ... ad ... de edend. ... lib. 23 ... ut ego tanquam reus ... ac ...

ui argentarius meo noie solverat ... tanquam actor
... recusans a ... mandato meo pecunia argentea
... reddiderat ... indebito ... petiuit
... actorem ... meis ad
... ut ... barbanus
... Ka ... absoluerer ...
qua actor ... rutum ...
... argentarius ...
... admi ...
... ...
... tanquam actor alternatiue
... ...
petiones ... narratis ...
argentarius ... ...
forme ... quacunque ... actor ...
argentaria ... ... praedicto ...
... ... sedita
fuit ... ...

Ex ... ... instrumen
... ...
... ... iudicata ...
... creditore ... ad ...
... ...
... iudicata ... exceptione ...
... obligationis
... peremptorias 3 ...
... hoc ... 4 ...
... adeuntis ... ex edicto ...
... reperto ...
argentariu ad ... agere ... argentarius ...
... et ... idoneus ...

C

e adversissima adversus creditores et debitores argentarii ...
nos argentarii ... creditores et debitores
in lecto venerit ff. ... de eo per quem factum ... ra
randa. 135 ... l. ... ped. ... 5 ... de dolo ... actionum ... exceptionis potestate ... agere n. 5 ...
... iudicatarum ... titulo ... magistratum
... miserationes 3 ... coll. ... 4 ... cod. ...
torias 3 ... rescindi ... necessaria ... per iudicium
... restitutionis ... cap. ...
l. ... iusta causa ... rescindenda ... aduersus ...
... causa principali ... in
in regno ... cognoscere ... iudic...
ut ... forma ... et intrinseca ... arbitrium
... durante primo ... de ...
... iudicii ... debitorem ...
... idiom. ... argentarii ...
... probatio ... veritatis ...
apud iudicem ... restitutionis
detinebatur et ... adversus ipsum ar
gentarium ... decernendam ... n. ...
... ad ... in ... ...
... in lege ... ff. ... in ...
hoc ... in n.° 10 ... et ...
... dolo ... lim ...
... edictorum ... probationibus ...
... quo ... restituendi ...
... adversus ... iudicata ... directa ...
ex dicto adversus argentarium ...
... nec testium nec instrumentorum, ...
intentione mea ... apud iudicem ... restitutionis ...

tui tunc actio in [illegible] adversus eius [illegible] argentarium [illegible]
bier [illegible] id [illegible] per in integrum restitutionem rescin
[illegible] a e. d. et [illegible] nego [illegible] principali atque de meritis in
[illegible] reperti [illegible] tex. X. in [illegible] in [illegible]
§. [illegible] quo in [illegible]

Capua [illegible]

N.° 8

[illegible] inductione [illegible] accio [illegible] iure [illegible] Gaij intentio
in [illegible] §. in quo circa cautionem [illegible]
[illegible] [illegible] actionibus [illegible]
[illegible] introducit, [illegible] ex
edicto de [illegible] introduxerat, [illegible]
[illegible]: [illegible] creditori chirographum credite [illegible]
[illegible], [illegible] legi [illegible] neque [illegible]
[illegible] creditori in [illegible] facere [illegible]
debitores mei absolvantur [illegible] iudicatum [illegible]
chirographi [illegible] corruptorem [illegible] haberem adversus
[illegible] actionem [illegible] ad duo [illegible] estimationis, [illegible] in
chirographo [illegible], adversus vero corruptorem habeo
[illegible] actionem [illegible] quantitatis [illegible]
[illegible] in caut. [illegible] iudicatam
[illegible] adversus [illegible] chirographo [illegible]
[illegible] nunc [illegible] quanta in corrupto chirographo [illegible]
[illegible], qui [illegible] in [illegible] 4 [illegible]
[illegible] seg. f. ad l. [illegible] intelligenti [illegible] 3 [illegible]
ad edict. in l. 40 ff. [illegible] Joann. [illegible] cum pluribus
[illegible] ad l. Aquil. lib. 1.° p. 4. [illegible]
diligenter observandum [illegible] iudicatam [illegible]
[illegible] chirographo [illegible] chirographum
[illegible] creditorem [illegible] in 1.° iudicio [illegible]
[illegible] actionem [illegible] adversus [illegible]

absoluto, [illegible] actione [illegible], ad duplum eius quod inventum.
a lege Aquilia et [illegible] eius quod invenit ad [illegible] aut
corruptum [illegible]. [illegible] notationes [illegible] illae quae nimirum [illegible]
[illegible] in favorem [illegible] absoluti, hoc [illegible]
[illegible] rei judicatae adversus [illegible]. audiri
judicio [illegible] l. imperatores [illegible] l. a. C. cod. [illegible]
rescind. [illegible], q. se creditori [illegible] exceptione rei judicatae [illegible]
ret l. 1. et tot. tit. [illegible] excep. rei jud. [illegible] inde que O. [illegible] actio-
ne furti et legis Aquiliae adversus [illegible] corruptorem inventa
[illegible] (ob inventionis novae pondus et momentum) [illegible]
corruptor chirographi idoneus [illegible]: [illegible]
[illegible]. [illegible] inveniens in integrum restitutio
adversus [illegible] postulabitur, ut illa rescissa, cessante que rei judica-
tae exceptione, actio [illegible] directa adversus [illegible]
res dirigatur, arg. [illegible] ind. C. [illegible] in pria [illegible]
[illegible] et l. [illegible] 13 §. [illegible] C. de jud.

in nova restitutione

cognitione hic [illegible] tractabitur. Verum creditor qui inventor
rei judicatae chirographo [illegible] corruptorem
[illegible] potuerit [illegible] [illegible] scilicet [illegible]
instrumenti [illegible] quantitatem et fidem
chirographi, apud [illegible] judice [illegible] [illegible]
bare, [illegible] restitutio adversus [illegible]
rei indulgetur, et [illegible] magis est, neque actio [illegible], neque
actio legis Aquiliae adversus [illegible] corruptorem [illegible]
[illegible] tabulae [illegible] §§. et tribus legibus
sequentibus ff. de furtis; [illegible] quoniam [illegible]
inventione sua repudiata [illegible] potuit, [illegible]
[illegible] longe [illegible] [illegible] quae de [illegible]
[illegible] specie [illegible] ex [illegible]

Hu

et lui. suo probavimus: veniretamen sibi, qui iudicio praeter pro suo
brevi protestatione de chirographo, deficientibus tunc vel illis
aliis probationibus inventionem suam imolere non potuit; quam
situm partium iudicium et causam omnia pisare pro agendum
una dict. [illegible] legis [illegible] [illegible] convenire
si accipiebat expectante: alioquin retinet in integrum adver-
sus [illegible] in servato jetus [illegible] adversus debitorem debito
rem sine metu exceptionis rei iudicatae, et in integro resti
tuet. [illegible] eleganter [illegible] inductione in l. [illegible] de
no [illegible] [illegible] [illegible] 13. §. ult. C. de jud. [illegible]
in [illegible] [illegible] [illegible] A [illegible] in l. [illegible] tabula 27 et d. l.
[illegible] 32 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] per [illegible] [illegible] [illegible] in l. [illegible] 11 [illegible]
[illegible] et [illegible] 323. [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] del. c. [illegible]
cap. 2. nº 19

! D.

[illegible] superiora [illegible] [illegible] [illegible] in l.
admonendi 31. [illegible] de iuriur. [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] definitiva [illegible] [illegible] [illegible] [illegible]
[illegible] sine metu exceptionis rei iudicatae [illegible] [illegible]
[illegible] [illegible] per in integrum restitutionem [illegible]; [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] definit
[illegible] in [illegible] sine metu exceptionis [illegible]: [illegible]
[illegible] [illegible] actionis [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] ita [illegible] [illegible] [illegible] 24 [illegible] cap. 19
[illegible] n. 11 [illegible] cap. 27 Zerzius [illegible] 1º [illegible] [illegible]
[illegible] 10 [illegible] [illegible] [illegible] 2 [illegible] nº 22. [illegible]
[illegible] [illegible] [illegible] 74 [illegible] 5 [illegible] [illegible] [illegible]

iudicata lo. 42 tto 2o

[illegible] legem ne [illegible] [illegible] [illegible]
[illegible] [illegible] Alexander ab [illegible] Doctoribus
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] restitutionis [illegible] [illegible] [illegible]
[illegible] ad principium [illegible] [illegible] [illegible]
ad [illegible] [illegible] [illegible] Jason [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] secundum [illegible]
[illegible] [illegible] [illegible] [illegible]
ordinarium restitutionis [illegible] [illegible] [illegible]
[illegible] et mere [illegible] [illegible] [illegible] [illegible]
[illegible] demum [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
necessarium iuramentum [illegible] [illegible] [illegible] [illegible]
iuramentum [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] rei iudicatae [illegible]
[illegible] [illegible] [illegible] intentionem [illegible]
[illegible] [illegible] [illegible] restitutionis [illegible]
[illegible] [illegible] [illegible] Evidenter [illegible] [illegible]
[illegible] transactionis [illegible] rei iudicatae [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] iudicis [illegible] [illegible] [illegible]
[illegible] [illegible] Imperatores [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] propterea [illegible]
[illegible] imitationem [illegible] [illegible] [illegible]
[illegible] [illegible] iudicatarum auctoritas [illegible] [illegible]

[illegible]

nobis instrum. explicavit repellatur. cum si quid extraordin.
vanit. ex causa Spiri prius vicinata, recepere nova
instrum. audiri q. habe in iore definitive, Direxum
mauet. ... Tracer 11 et ... 10 § ...
... secunda ... ... Secundus ...
... Neque

huic difficultati satisfaciet; ... lib. 18 observat.
cap. 37 cum Alexandro ... ... reductionis
d. ... num. 34: ... ... integram
restitutionem ... precedit, et ... ex causa
Spiri ... ...
instrum. non ... in iudicio educere, ...
... ...
integram restitutionem precedit. ... ...
... ex ... ... 24 ... Papa
... 20 ... ... (2
error ... nimirum circa productionem huius instrum. ...
... ...
... ... arbitrantes ... ...
tiones, ... omnia ... tractat ... ...
... ... instrum. ignorantia ante pronuntiationem ...
..., adeo ut ... ... ingressu iurare
... ... ante ... ...
... ... Sant. ... ... Mathias
... doctr. ... doctrina ... ...
... ...
... ... instrum. ... ...
... ... nihil est peculiare: quando quidem ... ...
... ... ex causula Spiritus ... ... maiori
tractat ... ... ex ... ...

Judicata lib. 42 tit. 1.

Porcar. sup. Rotam ... ind... Alimentarius § ... D...

n.o

12

... eminen... nis ... t...

... Sanda ... t...: ... quam ... ex ... principio ... Ex ... fuerint ... ad ... ipsa ... Signanti ... principalis notant ... in ... principaliter ... quasi ... importante ... Frich ... coll. ... g 21. ... secunda ... Tenori ... uberius quoniam ... libenter ... prudentis esse ... Opinationi ... ignorantias ... in ... impeditum ... necess... Opinionem ... quod ... declaratur ... l. ... tit. ... g ... Ex ... Hothom ... ... n. ... et 2 ... omni ... in ... deserti ... cumulatiue ... Opinione ... publicatio ... ad ... inquirenti ... eiusmodi instrum... dicendum ...

interlocutoria [illegible] quae in [illegible]: Oportet eunde [illegible] in [illegible] de [illegible] injusta ignorantia et impedimento [illegible] [illegible] [illegible] [illegible] licet. [illegible] rescindi [illegible] [illegible] [illegible] [illegible] purgatus [illegible] [illegible] [illegible] et n.° 16. [illegible] [illegible] [illegible] restitutionis in integrum [illegible] [illegible] [illegible] principali [illegible] tanquam si definitiva [illegible] in authoritatem [illegible] judicatae [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] dicemus [illegible] definitiva [illegible] necessarii [illegible] rei judicatae authoritatem [illegible] habeat.. [illegible] quamvis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] definitiva [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] extraordin.° restitutionis [illegible] [illegible] restitutionis judicium solemniter peragi: [illegible] [illegible] [illegible] [illegible] eundem judicem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] judicata [illegible] [illegible] interlocutoria [illegible] [illegible] habeat [illegible] [illegible] judex [illegible] jure [illegible] [illegible] [illegible] [illegible] [illegible] 14 [illegible] [illegible] 17 [illegible] [illegible] [illegible] [illegible] 21 [illegible] 41 [illegible] [illegible] [illegible] 13 [illegible] [illegible] 2 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] jure [illegible] [illegible] judex [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

13

Tota itaque [illegible] difficultatis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] necessari [illegible] [illegible] judicati [illegible] [illegible] [illegible] authoritatem rei judicatae, neque [illegible] [illegible] [illegible]

tia cost. ano quod Jud. de 2° ment. 12 Jo. .. ... d.d. Juan. in Imperatores 38 ... Padilla. ... errar. 7. ... n° 145 ... in ... 1 ... ... de ... 19 error 3. Val. in tract. ... n° 3 ... respondit aut ... multiplex ... quoniam ... definitivam ... ex ... legitimis et jure ... firmatas, ... ex privilegiata atque ... plate descendit, quare juram. necessarium ... solum ... ambiguitatis juramentum ... cessarium in rei judicatae stantis ... locum habet: Ut a Gaio nro. ... in ... t. 31 ... ex Otual. et Fer. ... Grey. ... in l. 9. ... 3. ... inde ... facilius ... jurati ... specialis ... dic... ... observantur ... ... necessarii juramenti ... solemnitates ... noua instrumenta ... deinde ... falsi ... mendaci ... reddebat in integrum ... exceptiones ... judicationes ... l. ... Inst. ... 18 ... 39. Donel. ... 21 ... 6. ... inter justas ... dolus ... causis ... noua instrumenta ... rei judicatae exceptio ... vero cavit de dolo ... falsitate ... tandemque ideo ... per noua instrumenta ... judicii ... in ipsius ... jurantis judicium ... quoties ... huius modi ... juram. ... judex in ... ... in ... admonen. ... 31 ... l. 30 ... Donel. ... 24 ... 19 ... ibi ... magna turba Doctor.

12
1 4

Nequeuntibus.

Si obijcias solutionem hanc insufficientem ... quoties ... manu

fere

Iuste sequi videri ... causae rationes ... iurameti voluntarii ... definitiva ... iudicialis ... instrumentorum ... retractari ... iuramento voluntario ... iudiciali ... l. sicut ... de iure iurando ... l. ... cred. ... in vi iuramenti ... definitiva ... instrum. ... iure ... iuramenti ... exceptionis ... de iure iur. ... Donel. ... Duaren ... iuramentum voluntarium ... iuramentum necessarium ... iudiciale ... Donel. ... Cuiac. ... ad Donel. ... iurament. necessarium ... iudicis ... de iure iur. ... iuramentum voluntarium ... iudiciali ... cred.

l. 5 C. de delig. et aet. ter. vulg. at vero cum juramento necessarium
inveniri et reveniendis litigatoribus F... solo judici arbitrio
... sibi litigatoris ... judicant, primo et appellare
..., et per ... instrumentum ... justificatum ... jure
... l. ... 11 C. ... admonendis 31 ...
... l. 1 § 1 ff. ... l. ... 56 § ... ff. de ...
... lib. 18 ... § Contra ... l. 31 n. 9 ... ad
... lib. 24 ... ut ... et ex ...
... obscurissimo ...
... § ... ff. de ... jur. ... super
... ...
... l. 3 C. de ... sar
... tract. ... n. 23 ... textu

Nunc autem aliquas doctorum maximas ... et adversus principalem ...
... eleganter ... in l. 1 C. ... et de ...
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
... executioni opponat ... hoc
primum ... instrumentum ... per modum
exceptionis oppositum ex ... extraordinario ... ordi-
nario appellationis auxilio ... invalidum ... faciat, ... dicit
... scriptus extat in l. 2 C. de ... ex quadicit ... argu-

mentum

[illegible] definitiva absolutoria [illegible] defensionem [illegible]
[illegible] transivit in rem judicatam, [illegible] [illegible]
mentum judiciale [illegible] peremptoriam vel [illegible] exceptio
[illegible] adversus actorem [illegible] intentionem [illegible]
[illegible] exceptio [illegible] peremptoria [illegible]
[illegible] de [illegible] [illegible]
[illegible] secundum [illegible] [illegible] judicio [illegible]
[illegible] adversus executionem [illegible]
[illegible] extraordinario [illegible]
[illegible] [illegible] ipso jure
[illegible] quod [illegible] instrumento [illegible] peremptoria
[illegible] jure [illegible] rei judicatae [illegible]
[illegible] [illegible]
[illegible] ipso jure nulla [illegible]
[illegible] tamen non est [illegible] peremptorio [illegible]
[illegible] neque [illegible]
[illegible] instrumenti [illegible]
[illegible] [illegible]
[illegible] Imperatore, [illegible]
[illegible]

[illegible]
[illegible] 19 [illegible] exceptio [illegible] duos
hypothecarios creditores [illegible], [illegible]
[illegible] in debitore [illegible] creditor [illegible]
posterior [illegible] rigore [illegible]
[illegible] hypothecariae [illegible] actionis [illegible]
[illegible] 16 [illegible]
[illegible] creditor 12 [illegible] potiorem, [illegible] reactio [illegible]
[illegible] hypothecaria actione judicium, [illegible] creditor [illegible]
[illegible] peremptoria prioritatis exceptione [illegible]

rescindebat eo posteriori creditori agenti per hipothecariam suo
sue anexam rure d[e]m[ande] omnino enore qui[bus] q[ue] creditor d[e]-
mandate et tota dimota possessio in secundum creditorem translata
e ... indicantes aucthoritate hipothecariae, intentione d[e] creditoris
12 § a autore ... fundis 16 § creditor p[ro] re pignor[ata] ...
prior creditor condemnatus fuerit pignoris possidere ... in
eandem creditorem translatae per eamdem hipothecariam a ...
... prior et potior est rei ad... creditoris posteriore ...
... ... pignoris vinceret, quem ...
... ... rei iudicatae exceptio, priorem ...
creditorem in secundo iudicio agentem, efficaciter repellat ...
fondet rei iudicatae exceptione ... in q[ui]d dicta ...
... creditor in primo iudicio ... potuerit perem...
... prioritatis exceptione opponere. ita ut ... cognitione
praedictae exceptionis iudex eum condemnaverit: ...
... qui ... primus creditor in hoc secundo hipothecaria
... iudicis ... mo... ... in ...
educat, ... per modum exceptionis in primo iudicio ...
... eadem res ... eadem persona ...
... rei iudicatae, ... authoritas 12
... ...
... rei iudicatae ... a ... ...
argumentantes ... Lanfrancum ... ...
hac specie ... potior creditor in 2° iudicio ... repelli in
secundo iudicio per exceptionem rei iudicatae, q[ue] peremptoria
... exceptione ... ... in
1° iudicio opponere de qua ... exceptione ... Communis
iudex ... ... condemnavit ... significaverit ...
dictor in 1° iudicio praedicta temporis exceptione non opponere
... aut opponere ... ...

(menti

menti deperdit, subrepti aut corrupti dicta dicere [illegible] fuerit litt.
[illegible] instantiae perdere [illegible] quae transivit in rem iud
[illegible] praedictae temporis exceptione instantiae quae inve
nerit [illegible] in secundo iudicio [illegible] exceptionis
[illegible] iudicata [illegible] in secundo iudicio agere [illegible]
[illegible] [illegible] [illegible] Quincere
[illegible] [illegible] praedictis doctoribus [illegible]
[illegible] [illegible] exceptione [illegible] in
secunda instantia [illegible] ius [illegible] actio
[illegible] in secunda [illegible] peremptoria exceptionis
[illegible] iudicium deduxerat [illegible]
[illegible] [illegible] exceptio
[illegible]
[illegible]
[illegible] in 2a instantia [illegible] ita [illegible]
[illegible] [illegible]
[illegible] extra [illegible] auxiliant
[illegible] [illegible] 17.

[illegible] [illegible]
[illegible] doctores [illegible]
ut [illegible]
[illegible] scribentes in l. [illegible]
16. [illegible] de Reg. [illegible] 2. part. [illegible] 15. n.o
01 Rodericus [illegible] [illegible] [illegible]
[illegible] 10 n.o 2. Marzian. [illegible] tom. 8 p. 445. n.o 15
[illegible] 27 ad Dorec. p. 2. [illegible] Cancio [illegible] 10. 1o
4o 2. 5 n.o 29 [illegible] [illegible]
[illegible] vocare [illegible]
[illegible] deveniamus [illegible] [illegible]
[illegible] atque sine [illegible] [illegible] Credit

praeterea

... cui ad gradicta ... no 2° et ... quemcuialiqui ...
... ... tenent enim non ... existimat ... concordantes ...
... ... C. ... relicent ... ... residentium et
interrocet. ... ... prima diffinitiva ... absolu
... ... in authoritatem rei iudicatae eadem cao inhiben
... inde ... ... licentia ... de ... in qua ...
unde ... consequentia ... imponenti ... ... absolu
... opponit ... adversus ... exceptionis iudicatae ... ex
... ... iudex ... ne cognitionem ...
... ... opposita ... ... pronunciet ...
... ... rigore ...
in ... ...

n° 18

In quo casu indubitanter asseverandum ... ... sententiam absolutoriam priori absolutoriae ... ... omni
modo validam et iure munitam, adeo ut si habeat appellationem in authoritatem
rei iudicatae ipso iure transeat ... in hoc iudicio per modum
exceptionis non opposita efficaciter ... ... censetur prima
sententia per modum exceptionis adversus secundam executionem opposita
inefficax esse ad remorandam eius executionem: quam ... ...
... Felin. et Joann. Andreas asserant ... ... ad nunc
casum nequaquam pertinere ... ... in ... ...
... extra de ... ... huius ... ...
e: utique ... ... absolutoria ... ... instrumentum,
exceptionis ... ...
iud. l. 7 §. in die ... ...
neg. gest. haec sic ... ... peremptoria exceptio ... opposita iudicat
... ... nisi appellatum sit l. 2 ... ... sibi
... et ... ... munitur ... ... absolutoria
in hoc nostro ... si opposita ... ... instantia, ita
ut iudex de illa neque cognoverit neque pronunciaverit ...

aut eius

aus eius executione non invalidabit. quo arg.° mani[feste] probat
tenus . de hac I.ª specie non loqui. deinde id ipsum habetur socie
probati ex x. directo in . inter ro de . et rejud. sequi
tis dignus e ut [illegible] magnifice extollatur [illegible] acerrimus
[illegible] juris [illegible] probata optime firmat. [illegible]
[illegible] quae perfecto obscurissimo e post deinde observare
debebunt [illegible] ibi opposita ab Innoc. [illegible] . ita ee [illegible]
esset monasterium [illegible] macense S. Antonii per antiquam
[illegible] in authoritatem rei judicatae, hoc jus monas-
terium S. Leodii [illegible] ut quandocunque monasterium S.
Leodii abbatem sibi eligere oporteret personam in Abbatem eumen-
dam non ex proprio gremio, sed potius ex gremio monasterii [illegible]
censis eligere [illegible] eligendi extra se [illegible]
et hec e illa [illegible] ind. [illegible] appellatur, non autem illa quae a
primis et secundis judicibus delegatis ind. [illegible] plata fuit uti
[illegible] observaverunt Felin. et Joann. Andr. [illegible]
tas in illo [illegible] ex eo [illegible] quod cum primi et secundi judices dele-
gati in eo [illegible] incidere errorem ut credamus
primos et secundos [illegible] loquuti fuisse [illegible] super negocio princi-
pali [illegible] delegatis primis et secundis pronunciatum [illegible]
[illegible] quod secundi judices delegati super ne-
gotio principali non [illegible] fuerunt [illegible] super incidenti
articulo recusat. et suspitione priorum judicum delegatorum
quas suspitionis et recusationis [illegible]
[illegible] secundi judices pronuntiaverunt eius [illegible]
[illegible] negocium principale eiusque [illegible]
voluta fuit ad priores judices [illegible] Innoc. [illegible]
[illegible] delegationem non [illegible] per secundam [illegible]
[illegible] principalis ad pri-
mos judices devoluta fuit uti [illegible]

interpretantur itaque primi iudices de causa principali sententiam I. antiquam [illegible] pronunciaverunt quod ut dicit inquit nequeunt primum iudicium ante [illegible] nec rescindit ipsi antiquae sententiae obstare vide [illegible] exceptio rei iudicatae opposita fuit: [illegible] a sententia prioris iudicis (quae secunda appellata respectu antiquae [illegible]) appellatum non fuit transivit efficaciter in auctoritatem rei iudicatae: adeo ut postea praetextu primae sententiae postea regente, secunda nequaquam ipso iure rescindatur neque eius executio removeri, prinde abbas electus non ex monasterio Rothomagensi sed ex monasterio [illegible] confirmatus fuit ab Innocentio. Utique in 2a sententia priorum delegatorum pronunciatum fuit rite et recte electum esse abbatem ex monasterio [illegible]: quod de directo iure per exceptionem prioris antiquioris quae sententia eius nihil probatum fuit, et haec verissima esse, [illegible] [illegible] dicit sententia ex quo assertio nostra evidenter probatur: licet secundam sententiam priori contrariam efficaciter valere sic ante finitam instantiam exceptio peremptoria iudicati non opponatur, itaque [illegible] sententia postea regente, secunda ipso iure non rescindatur [illegible] quinimo in hoc casu ad rescindendam secundam [illegible] restitutionis beneficium confugere dicit [illegible] in l. Imperatores [illegible] de re iudic. quam restitutionem reus in secunda instantia condemnatus impetrabit, si in iudicio restitutionis iustas impedimenti et ignorantiae causas allegaverit dicit ea [illegible] [illegible] dicit in l. Argentarius [illegible] § Ut [illegible] ff. de edendo. quam ob rem [illegible] in d. l. I C. quod [illegible] non necesse de hoc casu neque [illegible] [illegible] quamquam [illegible] in d. [illegible] inter extra de [illegible] [illegible] esse [illegible] [illegible] [illegible] [illegible] illud sapienter explicavit [illegible] habita cui [illegible] recte intellecta nihil [illegible] [illegible] superaddi potest

itaque hoc 1o casu omnino [illegible] [illegible] nostro [illegible].

neque cum ulteriori juris ratione difformatur. Ad secundum casum [illegible] venia
[illegible] in quo [illegible] interpretari posse videtur quod decretum inter definitiva
[illegible] in instantia appellationis [illegible] judicis [illegible]
eadem causa [illegible] in qua secunda instantia ante secundam
pronunciationem [illegible] prioris [illegible] rei judicatae exceptione
[illegible] exceptionem obstante, judex vel per interlocutoriam
in sola definitiva opposita exceptione [illegible] hac pronuntiatione repellit
pronunciamus [illegible] causa antehac judicatum esse ineficacem
quoad rei judicatae oppositam exceptionem, et indeque ex meritis
[illegible] tamquam [illegible] exceptione [illegible] definitivam
condemnamus. si in qua specie dubitari poterat utrum haec secunda
definitiva [illegible] priori definitivae [illegible]
sit [illegible] ac [illegible] [illegible]
[illegible] quando [illegible]
[illegible] post [illegible] de sententiis et [illegible]
[illegible] ac hac [illegible] interpretari
poterat [illegible] secunda [illegible] priori [illegible]
[illegible] nullitatis declarando [illegible]
[illegible].

20.

Caeterum neque in hoc secundo casu [illegible] neque cum juris
ratione difformatur. quoniam ex [illegible] secunda sententia
priori [illegible] et jure [illegible] quomodo judex
pronuntiat in [illegible] definitiva, parte [illegible] interlocutoria
ante definitivam [illegible] rei judicatae exceptionem oppositam
[illegible] repellat pronuntiando exceptionem rei judicatae ineficacem
[illegible] nullitatis [illegible]
[illegible]
[illegible]
[illegible]
[illegible] definitiva [illegible]

exceptione rei iudicatae, ex qua iure repellentis vel potestas [illegible]
victoris, tandem exceptione exigi reiicientis eae utrumq.
[illegible] unius virtute exceptio opposita aut validae et
iure munita fuerit, authoritate rei iudicatae hactenus
habuerit, nihil omninus [illegible] si quae ex obventis [illegible]
principali vel viribus exceptionis cognoscit exceptione
[illegible] in [illegible] dilatoria repellit, primam
[illegible] evacuat [illegible] ac nec secunda [illegible]
a. 1. [illegible] appellat. arg. x. [illegible] [illegible]
23. § 2. [illegible] ind. [illegible] [illegible] [illegible] [illegible]
c. [illegible] vocat. [illegible] lo. 27 ac. Donel. [illegible] 2 lit. D. [illegible]
rei acrissima [illegible] est nimirum q. [illegible] in secundo iudicio [illegible]
[illegible] [illegible] ordinarium prioris successorum
de viribus primae [illegible] exceptionis oppositae [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
viribus [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] ante haec [illegible] [illegible] q. proinde
rei iudicatae [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] ex [illegible] [illegible]
[illegible] ut [illegible] apud doctores [illegible] [illegible]
[illegible] [illegible] [illegible] in l. 1. § 1° [illegible] 2. [illegible]
[illegible] sine appellat. [illegible] [illegible] quomodo et
[illegible] iud. Donel. lo. 21 [illegible] [illegible] ad [illegible]
[illegible] [illegible] iud. [illegible] de nullitate exceptione
[illegible] n. 118. [illegible] tract. de iud. [illegible] [illegible] per tot.
porro [illegible] nullitatis [illegible] aut vere aut interpretative ir[illegible]
[illegible] ex intentione alterutrius litigatoris [illegible] [illegible]
[illegible] allegantis hanc [illegible] potestatem habet [illegible] [illegible]
[illegible] ordinarii [illegible] [illegible] [illegible] [illegible] nec
[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

21

iudicato lib. 42 tit. 1°.

Itaque nos secundo casu canter reiecto, quo ex ratione nostro et requisitis veris ratione conformata ad tertium et ultimum casum a doctoribus exagitatum descendimus necesse est quod perfecto deveniamus, literis et doctoribus conformius: quorum ita ex . . . sub. proposita. Quaestionem reso[l]ucionem . . . ait. Cavarit. . . . c. illa 1 . . . . quod apud eundem iudicem vel . . . iudicem . . . in prima definitiva condemnatus eadem causam nova instantia et libello renovat. Cui reus in 1a definitiva absolutus exceptionem rei iudicatae opponit, primam esse sententiam rei iudicatae authoritatem habentem, ea intentione producit ut actor a iudicio repellatur, quasi . . . prius iudicatas iterum audiri non debeat. qua exceptione opposita statim ad iudicis scientiam notitiam que pervenit, . . . omnino iudex in negotio principali . . . procedat . . . sine repulsa id est sine legitima pronuntiatione interlocutoria et definitiva quae, . . . exceptionem repellat ad negotium principale procedat et condemnando reum in 1a definitiva absolutum tunc haec 2a sententia ante repulsam et reprobationem prioris . . . pronuntiata nulla est ipso iure adeo ut adeius executionem impediendam appellare necesse non sit quoniam etiam si . . . appellatam sententiam authoritatem . . . obtinebit. Et haec est . . . Almoramii c. . . . c. . . . licet. ibidem n. 9. Lanfrancus tract. de reprobation. n° 33. cum sequentibus Bart. tract. de iudic. in l. . . . 19 § . . . Marcellus ff. de iud. n° 07 cum sequentibus . . . quanvis . . . verum sit iudicem posse tacite aliquando . . . incidentem exceptionem sibi cognitam atque in iudicium deductam repellere . . . ipsam . . . principalem definitive pronuntiat, . . . in l. 2 c.

[illegible] Quest. parte 1 . . . extra [illegible] [illegible]. Et ultra
[illegible] doctores nihilominus tamen in quolibet exceptione [illegible]
[illegible] quae peremptoriae quarum tanta est authoritas ut nisi
[illegible] per [illegible] vel definitivam [illegible]
[illegible] judicium [illegible] [illegible] in exceptione
[illegible] judicis [illegible] [illegible] judex cui ab al-
tera parte [illegible] exceptio [illegible] antequam de
jure [illegible] jurisdictionis [illegible]
[illegible] principale [illegible] [illegible] definitivam
[illegible] sententiam [illegible] judex [illegible] definitivam super
negotio principali nulla est ipso jure, [illegible] in l. 1. C.
de [illegible] judicior. Et [illegible] [illegible]
[illegible] in l. 11 [illegible] 3. Parisiensis de probat.
[illegible] 58. n. 23 [illegible] in [illegible] tom. 1. [illegible] n.
36; [illegible] tract. de jud. lib. 2. tom. 2. disp. 5 n. 8 [illegible]
quae doctrina circa alias plures exceptiones [illegible]
[illegible] [illegible] judicata [illegible] [illegible] judicatur junctis his, quae [illegible]
[illegible] in l. sin. [illegible] 75 [illegible] Mascardus [illegible] n. 6 [illegible]. deinde
[illegible] doctrina circa exceptiones peremptorias [illegible]
[illegible] impedientes [illegible] in executionem [illegible]
[illegible] in integrum adversus [illegible] postulatam [illegible] C. in
integrum [illegible] [illegible]. Alexan. in l. a
[illegible] 22 [illegible] [illegible] l. [illegible] in l. 2. C. de
[illegible] in [illegible] Barb. [illegible] [illegible] dicuntur [illegible] in l.
[illegible] 7. [illegible] de [illegible]. Et l. si [illegible] 8. [illegible] 27
[illegible] nisi judex ex [illegible] peremptoriae
[illegible] exceptionem [illegible], [illegible]
[illegible] integramente, quod [illegible] ad plenum [illegible]
[illegible] saltem inducit [illegible] l. 2. n. 5.

f.

judicata l. 6. 42. [illegible]

[illegible] Verosi de aliis excep-

tionibus tam dilatoriis quam peremptoriis, ita ex jure a[illegible] judiciorum stilo receptum [illegible] judice [illegible] exceptio in judicium deducta [illegible] pronuntiari [illegible] principali [illegible] pronuntiandum [illegible] Vitio [illegible] dubitantes [illegible] doctrinam longe justiorem circa peremptoriam exceptionem rei judicatae [illegible] magis [illegible] rerum judicatarum auctoritate [illegible] de judiciis [illegible]

[illegible]

[illegible] materia [illegible]

[illegible] Imperatoris [illegible]

[illegible] Obiectioni [illegible]

[illegible] instrumentum [illegible]

[illegible]

[illegible] vera [illegible] anosi [illegible], [illegible], q [illegible]
[illegible] a [illegible] [illegible]
[illegible] anobii [illegible] nequaquam procedit [illegible]
[illegible] que secundum ipso jure [illegible], [illegible]
[illegible] perimetoria exceptione [illegible] varia [illegible]
[illegible] secunda [illegible] exceptione peremptoria
[illegible] quo nimo [illegible] instrumentes exceptione peremptoria
[illegible] in antia juris [illegible]
[illegible] rei judicate exceptionis tanta [illegible] authoritas ut judex
[illegible] debuerit ad negotium principale [illegible] que definitiva pro
[illegible] pronuntiationes quas per interlocutoria exceptiones [illegible]
[illegible] sine apell. qua [illegible] judex
[illegible] de causa principali [illegible]
[illegible] exceptionis pronuntiaverit, ideo hec [illegible]
[illegible] appellationes, [illegible]

11
23

[illegible]

[illegible] sic [illegible] in [illegible] secundum [illegible]
[illegible] removendi q. [illegible]
[illegible] inclinare [illegible]
[illegible] q [illegible] in [illegible]
[illegible] inventario ad
[illegible] illud [illegible] servandum [illegible]
ex opinione [illegible] additis [illegible] post [illegible] in [illegible]
[illegible] judicis [illegible]
[illegible] de [illegible] veritate, priore
[illegible] q [illegible] cause sint diverse
[illegible] 14 [illegible] 6 [illegible]
[illegible] l. [illegible] 12 [illegible]
[illegible] capite pronuntiatio [illegible] potest interlocutoria [illegible]
[illegible] momentanea [illegible] et [illegible].

[illegible]

[illegible] illo q. primam deputet tulit [illegible] impediende
proprietate [illegible] cognoscere priore que [illegible] tanquam in
terlocutoria plerumque revocare l. [illegible] juxta [illegible] cum
[illegible] = [illegible] predictas [illegible] interpretationes removendum
e in primis [illegible] inl. [illegible] l. [illegible] longe
minus dubitabilis casus [illegible] ubi ex [illegible] litteras bene [illegible]
[illegible] [illegible] tractat [illegible] de novo libello et nova
instantia retractanda [illegible] pervenire [illegible] [illegible]
[illegible] [illegible] instantiae [illegible] libello et nova
instantia [illegible] priore [illegible] [illegible] [illegible]
bene [illegible] [illegible] et [illegible] [illegible]
[illegible] longe [illegible] de [illegible] [illegible]
[illegible] [illegible] judicantes jurisdictionem [illegible]
77 [illegible] [illegible] 195 [illegible]
a. 3. = Quesus [illegible] [illegible] [illegible]
[illegible] ubi [illegible] agitur deductis [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] 23 [illegible] [illegible] [illegible]
[illegible] jud. [illegible] [illegible] [illegible]
[illegible] judiciis [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] inl. 2. l. [illegible] jur. que [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] authoritate [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] que [illegible] incidenter a nobis [illegible]
[illegible] inl. [illegible] [illegible] [illegible]

n° 24.

quoniam ... certa [illegible] ... in [illegible]
... [illegible] ... locus ...
... cui nihil ... adiicimus,

Ex [illegible] ...
actionem ... [illegible] ...
... [illegible] ... argumentum ... [illegible] ...
... [illegible] ... deducta ... [illegible] ...
... [illegible] ... incertum ...
... [illegible] ... actionem hypothecariam ...
... exceptionis ... (temporis et prioritatis)
... [illegible] ... iure ordinario
... remedio extraordinario ... [illegible] ... de
... [illegible] ... actionem ... [illegible] ...
... [illegible] ... exe-
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... actionem ... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... temporis et prioritatis excep-
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ... temporis exceptione

G

iudicatae 10. 42 [illegible]

primus iudicibus in iudiciis [illegible] ex quorum [illegible]
[illegible] exceptionem [illegible] [illegible], [illegible] tertium [illegible]
[illegible] iudicis [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] exceptio [illegible] rei iudicatae [illegible]
[illegible] qui [illegible] in semel decisum [illegible] secundum [illegible]
quamvis nova instrumenta seu actiones [illegible] producere
tamen [illegible] [illegible] [illegible] [illegible] instrumentum [illegible]
[illegible] l. 12 [illegible] [illegible] [illegible] de hoc [illegible]
[illegible] exception. rei iud. [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] secundum [illegible]
[illegible] instrumentum [illegible] exce-
ptionis admit. quando [illegible] tamen de iure [illegible]
exceptione [illegible] [illegible] [illegible] [illegible]
[illegible] iure secundum [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] et valore [illegible] debitor [illegible]
in tempore quo primus [illegible] [illegible]
erat, iam rei [illegible] dominus non erat [illegible] vendiderat [illegible]
uerat aut aliomodo ab eius dominio iam [illegible] [illegible]
L. [illegible] (5 § 1 ff. de pignor. l. res aliena [illegible] ff. de pignor. action. l.
[illegible] C. si res aliena [illegible] ad valorem hypothecae, [illegible]
tempore quo [illegible] debitor dominus [illegible] [illegible]
[illegible] in pignore [illegible] ex allegatis iuribus [illegible]
tract. de pig. 2 part. membro 3 [illegible] [illegible] in l. [illegible]
[illegible] 35 § 1 ff. de excep. rei iud. Cepolla tract. [illegible]
[illegible] [illegible] n. 26. Salicet. in auth. [illegible] [illegible] potiores qui [illegible]
[illegible] Marcel. [illegible] [illegible] [illegible] tunc demum [illegible]
[illegible] in primo iudicio victus ad secundum iudicium sine [illegible]
ceptionis rei iudicatae admitt. quando [illegible] [illegible]

pricule

[illegible] temporis in 1° judicio [illegible] necessario [illegible] et [illegible] jure secundi creditori [illegible] primum creditorem in 1° judicio [illegible] [illegible] eandem pignoris [illegible] [illegible] [illegible] de pignoribus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] dominium directum [illegible] [illegible] [illegible] in hoc judicio hypothecaria [illegible] dominium [illegible] [illegible] [illegible] primo creditori [illegible] [illegible] hypothecariam [illegible] ad victoriam [illegible] pignoris [illegible] [illegible] [illegible] de pignoribus [illegible] [illegible] primo creditore in secundo [illegible] [illegible] [illegible] de [illegible] [illegible] 10. ff. creditori [illegible] de pignoribus.

n° 25

[illegible] ad [illegible] [illegible] primus creditor in 1° judicio [illegible] [illegible] [illegible] [illegible] de jure [illegible] et privilegio temporis [illegible] [illegible] hypothecaria actione [illegible] [illegible] [illegible] exceptionis rei judicatae [illegible] [illegible] [illegible] de exceptione rei judicatae [illegible] ff. de [illegible] [illegible]

[illegible]

20.

attentorum [illegible] exceptionum [illegible] tunc demum
ad [illegible] actionem, et intentionem actoris efficaciter [illegible]
[illegible] tacite [illegible] pronuntiatum [illegible] secunda
instantia repellitur: aliter et [illegible] nova [illegible]
[illegible] deduci [illegible] l. 12 [illegible]
[illegible] 17 ff. de exceptione rei iudic. [illegible] 11 [illegible]
[illegible] libro [illegible] Ball. in l.
[illegible] ad exibend. Castrens. in l. Julianus 60 ff. de [illegible]
[illegible] 12 [illegible] lib. 13 [illegible] Paul. in l. Claudius 17. ff. a potiores
[illegible] lib. 20 [illegible] Papin. l. 3 ult. ff. de [illegible] quo circa regula [illegible]
[illegible] docet [illegible] definitiva retractari nequaquam posse [illegible]
illius in [illegible] antiquum [illegible] reperitur; [illegible]
extraordinario restitutionis auxilio prima [illegible]
[illegible] atque impedimenti causas [illegible] l. [illegible]
[illegible] ff. de except. rei iud.; [illegible] regula [illegible]
[illegible] habet [illegible] definitiva de iure [illegible]
[illegible] cognitione [illegible] qualis in
presenti [illegible] casus [illegible] primus creditor
[illegible] de inmobili pignore secundo creditori [illegible] excep-
tiones opposuisset. Vera etiam de privilegio suo licet inefficaci-
ter expertus fuisset: [illegible] subventis [illegible]
perdidit privilegii [illegible] intentionem [illegible]
in [illegible] instantia potuisset [illegible] secundus creditor
intentionem [illegible] primus creditor
[illegible] intentionem de suo privilegio [illegible]
[illegible] definitiva [illegible] foret [illegible]
[illegible] affirmando [illegible] creditoris
et repellendo [illegible] primi creditoris: [illegible]
post definitivam [illegible] in secunda instantia primus creditor
[illegible] potuisset [illegible] restitutionis remedio [illegible]

ei

et Exceptis, [illegible] instrumenti [illegible]

[illegible]

[illegible]

Cp. 3 D. veritate præsumpta, juris

et de jure ex definitiua sn̄a resultante atq.
de precipuis eius effectibus ad interpreta-
tionem l. in l. post rem §§. 4. hoc tit., et
l. juuianus 60 ff. de iudic. in not. bit.
et l. si pauraton 8 §. 1. ff. rem
Ad. ratam haberi et.

A Domino Preceptore meo D. D. D. Josepho nu-
ñez. De zamora Vespertinorum Juris Ciui-
lis Antiquioris ex generali Collegij scolaris
atque in Salmantina Curia Dig-
nissimo Vicario Anno Dñi
1656 Kal. Februarij.

[illegible]

iudicata l[illegible] 2:

[illegible]

un abeum in eius quin [illegible] iurianus cod. de [illegible] indeb. quo circa [illegible]
[illegible] novi [illegible] hanc [illegible] prumptam veritatem disertissime
[illegible] [illegible] tract. de presumpt. in preludijs part. 2 n° 3.
[illegible] definit [illegible] [illegible] [illegible] de iure est, [illegible] dispositione
[illegible] [illegible], et [illegible] presumpto tanquam [illegible] [illegible] statu
[illegible] ita ut contraria probatio [illegible] lege prohibente admittatur
cuius definitionis [illegible] meminimus [illegible] 1° n° [illegible] [illegible] hanc
[illegible] et definitionem prosequuntur [illegible] a [illegible] Menoch. de
presump. lib. 1° q. 5. n. 10. [illegible] lib. 14. [illegible] q. 19. Duarens
[illegible] de [illegible] indeb. q. 11. [illegible] n° 3 [illegible] i [illegible] q. 63.
n° 27. pragmaticus [illegible] in [illegible] [illegible] [illegible]
in [illegible] [illegible] in suo tract. [illegible] 8 [illegible] [illegible] [illegible]
[illegible] firmatione [illegible] iura [illegible], [illegible] [illegible] [illegible]
definitivam [illegible] etiam extra [illegible] et vere in [illegible] [illegible] [illegible]
[illegible] auctoritatis ut [illegible] [illegible] [illegible] [illegible], neque [illegible]
ceptionem [illegible] de [illegible] [illegible].

2.

Inprimis [illegible] [illegible] [illegible]
5.8 [illegible] de [illegible] indeb. [illegible] ideo [illegible], [illegible]
te testamentaria ex causa [illegible] testatoris, certa quantitas
[illegible] erat; predictam quantitatem [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible], [illegible] [illegible] quantitatem [illegible]
[illegible] ut [illegible] [illegible] [illegible] per definitivam [illegible] [illegible], [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
itatis pronuntiatione bona [illegible] [illegible] quantitatem [illegible]: [illegible]
[illegible] definitivam heres [illegible] [illegible] [illegible] [illegible] ante [illegible]
condemnatus [illegible], et quamvis postea [illegible] [illegible] [illegible]
[illegible] [illegible] indebitum, [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] quantitatem [illegible] potuisset: [illegible] [illegible]
testamentarie [illegible], [illegible] [illegible] [illegible] [illegible]

pr.

in sententia auctoritas sic erat quae indebite acquisitae fuere, nec
ut sua virtute adeo abditae sunt, ut quamvis de iure cadat
manere etiam attamen, de inde tamen ut tradit in quaestione de
rebus cedat 12. C. de Iudic. indeb. 2. de Iuvenat. Cuiluc. q. resp.
pag. in cod. 54, Glosa d. l. 8 merit. Donell. Gom. 32 lit. D.
Sarmient. lib. 2. select. cap. Duaren. adversus de Iudic. indeb.
Gom. 4. Valenz. Vbigrn. lib. clausis eadem ll. de iure cadenda
iis judicat cum falsitate, nequeque per actiones, neque per
exceptiones elegantis qui Bart. in d. l. 1. Dant
inde talis ... loci ... nostrae ... seu iure
... hominum ... accedit, si in ... ratione Ioan.
Ut adjudicationes bonorum ... non potest eam
... ex ... veritate ... bona
... coheredes ... definitiva ... judicatum ... quia ... ea
... in praejudicatione ... in rationem ... traditur
... impugnare ... immediate ... unde
... atque ... cedant ... ut ... sunt.
Fore ... bonorum ... non ... valido ... ton
... ... 45 ...
... auctoritas ...
... adjudicationes ... in adjudicationi locus ...
... l. 16. ... ab in ...
... discussionibus ... 8. ...
... ad ... in ...
... virtutis ... bon. ... 15. ...
... mendo. ... praedictor. ...
... examen ...
... in ... in ...
... ...
... ...

spiritu [illegible] actionis extraordinariae subsidiarium remedium [illegible] tradita à Bald. [illegible] Capitul. Rolan. Decis. [illegible] de [illegible] Videndus et [illegible] à Alexander 238 [illegible] [illegible] dicit tractatu [illegible] [illegible]

N. 3

[illegible] non [illegible] contra gravissimum [illegible] julianus [illegible] [illegible] [illegible] Verior [illegible] et communior opinione [illegible] [illegible] creditoribus [illegible] [illegible] [illegible] pecuniae [illegible] actionis [illegible] [illegible] non [illegible] neque [illegible] neque [illegible] [illegible] [illegible] heres [illegible] [illegible] [illegible] creditoribus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de jure [illegible]

[illegible] 60 [illegible] [illegible]

[illegible] perpetuae et peremptoriae [illegible] [illegible] exceptionis [illegible] pecuniae [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nocere [illegible] [illegible] [illegible] [illegible] [illegible] Paulus [illegible] Juliano [illegible] [illegible] pendente [illegible] [illegible] solummodo exceptio [illegible] Donell. et Valenz. [illegible]

[illegible] — hanc decisionem alia diversa [illegible]
[illegible] species [illegible] Sorex
[illegible] Soncz [illegible] Petrus [illegible] Faust. [illegible]
[illegible] si [illegible] deliberatione omnino
[illegible] ab [illegible] per [illegible]
[illegible] solvendi existimant [illegible]
[illegible] dicentes [illegible]
[illegible] ideam [illegible] nequaquam
[illegible] animali [illegible]
fundamentum [illegible] natura [illegible] que [illegible]
[illegible] manet [illegible]
[illegible] manet. [illegible]
[illegible] tota [illegible] n[illegible]
[illegible] neque mutare [illegible] 2. S. [illegible]
13. [illegible]
[illegible] frequentes [illegible]
[illegible] et [illegible]
[illegible] permanentes [illegible]
[illegible] in [illegible]
[illegible] natural [illegible]
[illegible] decisionem
[illegible] quaestiones [illegible]
[illegible] Venetiis [illegible] Venetiis [illegible]
[illegible] Cancellario [illegible] Sfritae [illegible]
[illegible] et ibi [illegible] n° 4 [illegible]
aliqua [illegible] inter [illegible] et ultimas [illegible] differentia
intercedere [illegible] in huiusmodi [illegible] dies [illegible] iuncta [illegible].

H

[illegible]

[illegible] 12 [illegible]

ta in 90 §. 4 [illegible] Ias. in [illegible] 1 [illegible] 18 [illegible] 8. et ibi [illegible]

14.

Altera circa hanc partem [illegible] inquit [illegible] doce exceptione doli mali exceptionis [illegible] debitor [illegible] ex errore [illegible] [illegible] [illegible] exceptio doli mali, que in obligatione naturali post [illegible] manente [illegible] l. 8 §. [illegible] nabere [illegible] creditore [illegible] [illegible] ipsa [illegible] exceptionis doli mali [illegible] absolutionis [illegible] adeo absolutio [illegible] n. debere in judicio [illegible] atque [illegible] pronuntiavit judex: quando Creditor [illegible] post absolutionem debitoris [illegible] manente obligatione naturali [illegible] exceptionis [illegible] [illegible] in [illegible] [illegible] [illegible] debitorem liberavit [illegible] in [illegible] specie [illegible] Creditorem [illegible] [illegible] [illegible] iniquitatem [illegible] necesse [illegible] judicata, veritatem [illegible] facere, neque [illegible] [illegible] admittere, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] debitor [illegible] [illegible] absolvens exceptione rei judicatae [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] debitor [illegible] bona fide [illegible] [illegible] [illegible] [illegible] exceptione [illegible]

[illegible]

plurisdiumpti generatos 40. [illegible] ... sinistre ...
desiru ... de illo in ... [illegible] ...
ad illaud; ... [illegible] ...
in ... 40. ... [illegible] ...
... [illegible] ...
in exceptione. Luciana quamuis ... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
e ... [illegible] ...
... [illegible] ...

n.° 9

Nunc autem ut
b... difficultatibus respondeamus ... in primis ...
... [illegible] ... Paul.
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ... animadu... 2.

n.° 5. 6.

... [illegible] ...
... [illegible] ... Cadavere ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...
... [illegible] ...

fi.

petere: ob terminos licet tempore solutionis, exceptione sicut generali zaor ac ... iudicatae, si nabuerit tempore ... exceptionem perdere et laboravit rei iudicatae si habuerit, tempore ... dictionis ... exceptio ... Victoria ... habet ... exequi ... liberationis ... resolutionis ... Victoria ... tam exceptione ... Clementin. hic ... Paulo ... Pirrus, ... suscipiunt debitores ... exceptiones fundata in obligatione ... in die ... eo tempore ... libelli et ... in quo ... dicendi ... quia exceptio doli mali ... debitor ... dictione ... in tempore solutionis ... libelli ... in ... Pirrus ... et obs ... tempore solutionis ... in exceptione doli mali sit ... tempore solutionis ... debitor ... Pirrus ... Opinio ... exceptio ...

6. 7.

... licet ... Castrensis ... Baldus ... Bartolus ... amicorum ... et maxime ...

[illegible]

[illegible] nec [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] absolutoris [illegible]
[illegible] manere [illegible] ibi [illegible] absolutus sit, [illegible]
[illegible] permanet. [illegible] [illegible] manerent
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] manere [illegible]; imo [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] 47 [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] debitore [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] 19 [illegible] 5. [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
63. [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] creditore [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] doctrinas [illegible] [illegible] debitor [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

H.

[illegible] 12 [illegible]

[illegible] debitore deducere [illegible] iudex [illegible]
[illegible] obligatione [illegible]
[illegible]
[illegible]
[illegible]
[illegible] iudicata [illegible]
[illegible]
[illegible]
[illegible]
[illegible] part. 5. [illegible]
[illegible]
[illegible] g. 17. [illegible]
[illegible] part. 3 p. 3 n. 12.

N.° 7. 8.

[illegible] varietate [illegible]
[illegible] tatibus [illegible] respondeamus. Et [illegible]
circa tam speciem [illegible] relatam [illegible]
[illegible] respon[illegible] videtur, [illegible] tandem [illegible]
[illegible] pecuniae [illegible] a [illegible]
ante rem iudicatam [illegible]
[illegible] dicens [illegible] mali exceptionem [illegible]
nullae [illegible] creditori [illegible]
ceptionis [illegible] incumbat [illegible]
[illegible] solutionis exceptione [illegible]
[illegible] existente [illegible]
[illegible] Salicet. [illegible]
celebratam [illegible]
[illegible]
[illegible] pecunia [illegible]
[illegible] soluta [illegible] iudicatam [illegible]

561

[illegible]

rum quam [illegible] a [illegible] [illegible] [illegible]
ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] Nicolai [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] quam [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] repetitionem [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] repetitio [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] obligationem [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] renunciationes [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] eveniens [illegible] 56 [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
repetitio [illegible] [illegible] 76 [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] exceptione [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
repetitionem [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

49

[illegible] spe[illegible] negamus [illegible] dicitur bene
[illegible] restituere [illegible] Lectiani [illegible]
[illegible] variatur [illegible] inducti [illegible]
[illegible] casus [illegible] per [illegible] casus [illegible]
Existentis [illegible]
[illegible] in casu [illegible]
[illegible]
[illegible]
[illegible]
[illegible] authoritate [illegible]
[illegible] et [illegible]
[illegible] bona [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] veritas [illegible]
[illegible] Prelati [illegible]
[illegible]
[illegible]

86

novamus [illegible] [illegible] admittere [illegible] [illegible] servata tamen
ut [illegible] [illegible] [illegible] neque [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] omnino [illegible]
quia [illegible] absque [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
§. 1 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] judicio [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] veritatem [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

1. 10

[illegible] [illegible] [illegible] [illegible] [illegible]
cum [illegible] [illegible] [illegible] [illegible] [illegible]
Paulus et Julianus [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] manente fundamento
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] neque [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] duo [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] declaravimus [illegible]

[illegible] ... in cu[illegible] ... [illegible]

[illegible] ... Edena ... [illegible]

[illegible] ... magna e diff[illegible] ... [illegible]

[illegible]

[illegible] ultima [illegible] [illegible] de pactis, ex qua [illegible], quam in tex. [illegible] 7. 16 idque Jason. et alii in [illegible] ad text. in [illegible] aiunt jur. [illegible] quae judex [illegible] pronun- tiat actionem [illegible] necessarium [illegible] cuius actionis et [illegible] actionis exercitium civiliter extinxisse, Castrens. et Jason. ubi supra. [illegible] quoad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] evadere: licet enim [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], atque [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] expressis [illegible] pronuntiationis [illegible] [illegible] id quod tacite et necessario importatur, l. Pomponius 40 § [illegible] D. de procurator. ibi, nam cum judicatur [illegible] esse simul judicatur [illegible] non esse. Concordat text. in [illegible] [illegible] § 1. ubi [illegible] [illegible] [illegible] [illegible] [illegible] Cart. eod. ubi [illegible]. cum magna doctorum turba. Verum [illegible] [illegible] [illegible] [illegible] quando id [illegible] tacitum est, necessario sequitur ideo quod expressum est [illegible] rationibus et exemplis illustrat [illegible] [illegible] [illegible] [illegible] [illegible] mutua [illegible], [illegible], licet ibidem expresse [illegible] [illegible] [illegible], ad [illegible] [illegible] sive solutionis [illegible] [illegible] nihilominus [illegible] [illegible] [illegible] [illegible] quoad [illegible] executionis [illegible] text. [illegible] de reb. cred. [illegible] [illegible] [illegible] [illegible] ad [illegible] Carab. Ant. Gom. Parlad. et Abed. ubi supra. [illegible] [illegible] tacite inferri desideratur, necessario ex pronuntiatione expressa [illegible], aut expresso instrumenti [illegible] tenore nequaquam sequatur, [illegible] [illegible] [illegible] pronuntiat. [illegible] [illegible], [illegible] [illegible] est [illegible]. [illegible] [illegible] [illegible] [illegible] except. rei jud. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 27. § [illegible] de [illegible] [illegible] [illegible] [illegible] pronuntiet [illegible] [illegible] [illegible], quo [illegible] [illegible] [illegible] [illegible] pronuntiat. [illegible] judex [illegible] pronuntiat action.

n. piare neque quam tacite vel expresse necessario sequatur reus Juventus
In dicendi ideo arimandi et Obligationes tales nadale [illegible]
lesionem [illegible] neque tacite neque expresse etiam evadere
et adhuc integro suo [illegible] Lotunc et jure [illegible]
relinquendas esse =

12.

Cui rei sequente [illegible] Pauli et Juliani
accedit ad hoc pronuntiationis [illegible] adjiccates a [illegible]
judicio rerum judicatarum [illegible] [illegible] praesentis [illegible]
[illegible] sententiae, [illegible] quaevis Creditor Cuius
[illegible] a suo debitore [illegible] [illegible]
petitionis judicio. Clerus Obligatio [illegible] [illegible] judicia
[illegible], ea quae ad respondendum [illegible] dicens
[illegible] in hac probatione [illegible]
[illegible] [illegible] judicatis [illegible], quo
[illegible] judex in [illegible] reus [illegible]
[illegible] [illegible] Ex qua expressa pronuntiatione
neque tacite [illegible] [illegible] [illegible] reus [illegible]
[illegible] [illegible] [illegible] exceptione [illegible]
[illegible] debitor [illegible] [illegible]
neque quoad expressa neque quoad tacita [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] Creditor [illegible] exceptione [illegible]
[illegible] [illegible] obligationis [illegible]
[illegible], [illegible] [illegible] judicio [illegible]
[illegible] obligatio [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
Exceptione Paulus et Julianus [illegible] [illegible]

[illegible] 8. [illegible]

151 —

vacat [illegible] capitaliter [illegible] secunda [illegible]
[illegible] retinenti, a [illegible] malis [illegible]
[illegible] exceptionis [illegible]

N° 13. 51

[illegible] Ex his infertur
[illegible] Obiectio [illegible] secunda [illegible]
[illegible] pronunciationis generalis [illegible] de iure [illegible]
debitoris [illegible] pronunciationis [illegible]
[illegible] secunda pronunciationis generalis [illegible]
[illegible] debitoris [illegible] ad [illegible]
[illegible] procul dubio [illegible]
[illegible] inseparabilis [illegible] in [illegible]
[illegible] auctoritate [illegible] debitoris [illegible]
nihil omninus [illegible] pronunciatione rei [illegible]
[illegible] naturalis obligatio [illegible]
[illegible] ut [illegible]
[illegible] in iudicio [illegible] Creditori [illegible]
auctoritate rei iudicatae [illegible] de iure [illegible]
[illegible] ex [illegible] resultante [illegible] iudicatas, sicuti [illegible]
ad responsum [illegible] doceimus. [illegible]
[illegible] secundo pronunciationis [illegible]
[illegible] absolutionis Creditori solvere, [illegible]
[illegible] procul dubio dicere, sine mera exceptionis [illegible]
[illegible] hoc [illegible]
[illegible] explicatas.

Nunc autem adveniamus [illegible] definitionis
membrum explicabimus [illegible] exceptionis [illegible]
argumentum [illegible] exceptio rei iudicatae aut
[illegible] favorabilis aut Odiosa [illegible] favorabilis, id est [illegible]
favorem debitoris [illegible] principaliter [illegible] nunc [illegible]
[illegible] pronunciationis habere debet [illegible]

[illegible]

sine mentione exceptionis doli mali, et sine mentione praelationis etc.,
stat; neque exceptio perpetua et favorabilis est, tale, solutionem
quemadmodum habet. l. Iulius 24. l. in summa 26. §. indebitum
ff. de condict. indeb. primaeque, siue judex pronuntiauerit actorem
in probare, siue pronuntiauerit reum in debere facere, necessarie est solut.
repetitionem. Vero huic debitori concedendam, ceterum si dicamus
praedicta rei judicatae exceptionem esse favorabilem, vel ob id quod
ideo actorum principaliter introducta, tunc haec est facienda
in quo cumque pronuntiationis casu solutionis repetitionem impedire
exemplo exceptionis, et contra quia ea quae non principaliter
in favorem illius fam. debitoris introducta est, sed potius principaliter
in odium creditoris, ideo ex quo illius exoneratione non
[illegible], sed creditorem deterrere solutionem per errorem condictionem
impedire. d. l. 40. ff. de condiction. indeb. et in § fin. ff. ad Maced.
Quod si rei judicatae exceptio odiosa est neque ad exonerationem de
bitoris introducta, repetitionem minime impediet etiam in illa
specie in qua judex pronuntiat reum in debere: quod cum omnino
sit id, ut est quod in antecedenti facimus. Verum ut huic difficultati
respondeamus [illegible] Bartoli. Castrens. et Iason.
ad [illegible] quod diligentissime se expediunt affirmandum esse ex
ceptionem rei judicatae aliquando habere causam exceptionis favo
rabilis, aliquando odiosae exceptionis naturam habere, quando
autem sit favorabilis, et vero odiosa facile dignoscitur ex
specie pronuntiationis ex quo oriuntur: praeterita in ea specie
[illegible] quam in [illegible] et Iuliano [illegible]. quoniam si
exceptio rei judicatae ex illa pronuntiatione oriatur in
qua judex declarat actorem in probare, tunc procul dubio
exceptio rei judicatae odiosa est et solutionis repetitionem non impedit
[illegible] nobis satis expiratum est, quia ei quam exceptioni primariae pronun
tiationi [illegible] intendit principaliter ad exonerationem rei est

K

debitorum absolui. potuit tamen sue principaliter ad regulam adeo
vir male instructi l. 4. C. de edend. l. diui 27. § rede § de
lib. causa. l. si 11. in princ. ff. de jur. jur. eius sup. explicari, quae
odiosa sicuti 2. 7. tamen rel. s. cti. macedoniani exceptio odiosa est
quae principaliter huiusmodi debitorem exonerat. Primo creditorem
principaliter deterret et renouit d. l. si 19. § ult. ff. ad Macedon.
at vero si odiosa exceptio iniatur ex praevio pronunciationis &c. ut
exeo inquo judex pronuntiat reum soluturum non debere: tunc indubio
exceptio est fauorabilis, quae sicuti in ipsa pronuntiatione ......
apparet, principaliter ad fauorem et liberationem rei debitoris ......
ti dirigitur: proinde primaria sua intentione fauorabilis est, sicut
exceptio Velleiani d. l. 40 de cond. indeb. = neque obstat
§ ult. quae obijcias praedicta exceptione odiosa videri, quae
judex pronuntiat reum non debere veritatem ....
in inquisit. obst.: ...... aduersus Salter ......
tamen si praedicta exceptio per hanc inspectionem odium admit-
... ... fauorabilis, quae debitori a bona
fide litigat magis est fauore quae odio dirimitur ut considerauit.
Donell. et quae judiciorum rigor uti inquit Bartol. et quae publica
rerum judicatarum authoritas, ex hac exceptione pendet.
quae saltem in hac specie in qua judex pronunciat reum non debere
licet a rigore .... ut in vero debitore absoluto
... ... fauorabile ad ...... solui repetitionem.

N.o 15.

Tandem
ad perfectam Pauli et Juliani decis. dissoluendam est ac illa
difficultas quae resultat ex ... in l. error. 7. C. de jur. et facti
ignor. ubi ...... errorem facti nec in ....
nemini nocet, nam causa decisio, velamento tali ......
in qua tibi duplex erroris status proponitur. primus quo reus ...
... ... errore facti ......

ante rem judicatam errore iam desinens facti negotii peniteat. de quo errore decidit reo non nocere; quinimmo etiam per errorem ne gotii penitere licet parti. Secundus erroris status est, quando ab initio litis, adusque rem judicatam in reo durante error perseverat, et quando post rem judicatam error emergit. de quo erroris statu decidit, quod nihilo post sententiam durante et emergente errore negotium gerenti ei nocere debeat, quod pretextu eius velamento erroris negotium gestum neque rescinditur neque instauratur. Ex qua decisione quoad utrumque erroris facti statum sic argumentamur quod utrumque Pauli speciem vor facti ante rem judicatam reo durante non nocet d. l. error 7. C. de jur. et facti ig nor. quod si verus debitor cum errore facti (falso existimans se iam condemnatum esse) soluerit repetere recte potest, et potest mutuo idem solutionis facte penitere: quoniam ante rem judicatam judicio adhuc pendente, error facti non nocet. Que decisio l. Pau li speciem evertit in qua cum Julianus affirmat verum debitorem post litem contestatam pendente adhuc judicio soluentem cum errore facti re petere non posse: deinde Imperatoris decisio. Circa secundum statum erroris, secundum Pauli decisionem evertit: quoniam error post rem judi catam perseuerans reo nocet. d. l. 7. C. de jur. et facti. ig nor. quod si reus post definitiuam absolutoriam in qua judex pronuntiat reum non debere, cum errore facti soluit, existimans se condemnatum esse repetere non poterit, quod pretextu erroris negotium post rem judicatam gestum non instaurari. hoc autem dictum. Ultima interpretes directo af firmant: quod si reus tali pronuntiatione generali absoluatur, ut judex pronunciet reum non debere, tunc solutum per errorem pecuniam repe titurum sine metu exceptionis et rei judicatae dedimus

No 6.

Et quidem huius difficultas in vera specie et casus applicatione tollit in uno constituendo egregie laborauerunt salicet. ibidem n.o 10 Jacob. de

Ra.

44.

Regina et Quaestionem 2am Cod. constitutionis eiusdem lib., illud plane statuere necesse est sit huius L. Vera species proposita ea est a Paulo et Juliano dicta quam sicuti in ipsa littera patet Caesares loquuntur de errore aliquo post litem contestatam, aut post rem judicatam emergente; sed potius de antiquo errore post litem contestatam, aut post rem judicatam perseverante. Vera itaque huius L. species cum praedictis doctoribus adiecto Cuj. in l. 2. C. de rescind. non posse. ponenda est tam circa exceptiones peremptorias, quam circa exceptiones dilatorias, quae ab initio veri notitiam per errorem facti non accidit post litem vero contestatam eam cognitam fuisse, aut denique post rem judicatam, Cui errori optime haec Imperatorum ll. applicari, eaque circa exceptiones peremptorias ita est distinguenda species. Reus quidem tam ante litem quam post litem contestatam cum errore facti ignoravit se peremptoriam exceptionem pacti, vel jurisjurandi, vel transactionis, vel doli habere, quod forsitan ipse non sciebat, vel defunctus cui heres extitit, ut rectissime ponit Cuj. et Donelo. plane in hac specie si ante rem judicatam sciens rem factum reus exceptionem opponat, prior error ei non nocet; quoniam exceptio peremptoria in quacumque litis parte recte opponitur. l. 2. C. de rescind. [illegible] 4. in exceptionibus ff. de probation. l. 4. ff. de jurisd. omn. jud. Cuj. in d. l. 2. Donel. lib. 18. Comment. cap. 12 et ibi Osuald. lit. Q. Carleval de judiciis lib. 1o tit. 2. disp. 4. no 23. et deinceps. Ceterum si reus cum eodem errore etiam probabili ad rem usque judicatam perseveraverit, et condemnatus intra dies fatales non appellaverit, praedictus error ei nocet d. l. 2 in fine C. de rescind. non posse. quoniam post rem judicatam decisaque causa, praetextu novorum instrumentorum non instauratur, nisi restitutio in integrum ex generali clausula praetoris interveniat l. Imperatores 35. ff. hoc tit. l. 4. C. eod. C. inter monasterium 20 extra de re jud. et de jud. [illegible] haec eadem imperatorum ll. quae circa exceptiones per

emptioniq[ue] quae cu[m] sallizet et Ley. exo. i cuimus, circa exceptio-
nes etia[m] dilatorias diser[ti]ssime cu[m] Donel. verificatur lib. 24
comment. cap. 11 in fin. in hac specie minor etia[m] cu[m] mandato
q[uo]d de mandato dubitari n[on] e[st] idoneus procurator, si adversarius no-
luit ratam rem ratam domi[nu]m habiturum satisdationem promittere, propter periculum
restitutionis q[uod] imminet l. minor 9 ff. de procur. deinde me-
les etia[m] cu[m] mandato, cu[m] i[n] illo dubitari n[on] e[st] idoneus procurator,
etia[m] si paratus sit cavere ratam rem domi[nu]m habiturum, q[uod] imminet
periculum necessariae absentiae reipublicae et militiae causa l.
miles 7. l. itademum 13. C. de procurat. Cetera exceptio judi-
cij dilatoria adversus tales personas cum n[ecessaria] e[st], ut si reus
cognoscat alterum esse minorem, alterum esse militem, oporteat
ante litem contestatam et judicium ultimum eas opponere: alioqui
si sciens et prudens exceptiones omiserit judicium n[on]
vit q[uod] praedictis personis nihil obstat nisi voluntas adver-
sarij rei, q[uae] propter imminentia pericula praedictas personas
potest ab initio removere d. l. itademum 13. l. licet 24. C.
de procur. l. si cum 8 § veterani ff. de procurat. Donel. ubi sup[ra]
et ibi Osuald. lit. X. Ant. Fab. et Sifan. in d. l. 8. § vete-
rani, ponamus ergo reum per errorem facti adhuc ignorantem
cum ab initio litem contestatum fuisse! profecto in hac specie errorem
n[on] nocet; quinimo ante rem judicatam praedictas exceptiones per errorem
omissas opponere potest, post rem vero judicatam n[on] potest imputetur sibi
q[uod] defensionibus suis n[on] invigilaverit, q[ua]m certum in illa specie in
qua judicium nullum existet, et nihil procuratoribus praedictis obstat
nisi sola voluntas rei cuius n[ec]n[on] vero alia jura vide d. l. si cum
8 § veterani ff. de procurat. meliusque d[icitu]r in l. q[ui] procuratorem 57 § si q[ui]s
remisit ff. de procurat. ita Donel. q[uem] omnino videndum e[st] d. lib.
18 cap. 11 et lib. 14. cap. 30.

Ex quarta. ad Paulum interpretat. decem

17

K

fuit

lit Vero ad Venuleium intellectum in obscura decisione d. l. in l. procurator § 1º ff. rem rat. hab. proponit jure tuo falsum procuratorem sine mandato agentem debitum a ... debitore pecunia interposita caut. de rato exegisse: post pecuniam autem exactam et cautionem interpositam, Dominus negotii idem Creditor principalis ratam solutionem non habuit, ac animo suo utens super eandem pecuniam debitorem suum iterum in judicium vocavit: debitor autem qui adversus falsum procuratorem male se in primo judicio defenderat, et succubuerat, adversus dominum principalem iterum nunc agentem efficaciter se defendit adeo ut absolutus per definitivam sententiam evaserit, quae absolutio (cum juxta Venuleio tuo, et Paulo ubi sup. supponendum est) hinc inde officii censendum est, quod debitor vere non debuisset ... potuit et reo quod Creditor idem actor intentionem suam implere ... nec, quae tui in l. ... nostri §. Docet tuus debitor iure nostro post absolutoria sententia mansit naturaliter obligatus. Cum autem falsus procurator animadverteret stipulationem de rato, ad versus se se commissam iri, propter improbationem negotii, a domino falso Creditor ipse dominus animadvertisset se ... perdidisse reque ... pecuniae vere debitae recuperandae ... superesse propter absolutoriam sententiam et rerum judicatarum authoritatem, hoc inter se se falsus procurator et debitor egerunt ut procurator exactam antea a se pecuniam Creditori sine litigio et sine lite restitueret, existimantes fore ut hac voluntaria pecuniae restitutione inter utrumque facta procurator tutus ad versus commissam de rato stipulationem evaderet, Creditor autem pecuniam sibi naturaliter debitam impune retineret; sinautem hic obiter interrogaverit quod pondus habeat, hoc dicti temporis docentis falsum procuratorem post reprobationem negotii heredi deinde factam pecuniam eidem Creditori sine judice solvisse ...

respondendum est idcirco tenendum ita supponere: quod post reprobationem negotii creditor nunquam poterit in iudicio a falso curatore exactam pecuniam per actionem negotiorum gestorum repetere: quod semel reprobato negotio periit actio negotiorum gestorum vel dispensatorem b. in l. in f. ff. de solut. l. quo est 17. § ult. ff. de rat. hab.

Tractatus singularis D. I. ff de ... ob. A. D. D. Josepho Nuñez de Zamora recens meritissimus ... vespertinae cathedrae in Civili Jure anno 1655 die 19 ...

...

Cpt. 1

Tenitr def.o Stipulat.

[illegible] ... S. S. ... [illegible]

[illegible]

Caeterum ... [illegible]

Explicat def.o ... [illegible]

In confirmationem ... bonis ... A. Pomponio ... Paul. ...

... solemn. ... circumscriptae bonorum formulae ... simulationibus jure civili inductam ... [illegible]

... recessione ... [illegible] ... periculum incidunt ... [illegible]

... [illegible] ... determinata ... [illegible] ... interrogaverit ... fidejussor ... [illegible]

... formulis ... [illegible] ... Cujac. ... Budaeus in l. 34. ... [illegible]

3.
Impugnatur interpretatio ... circa ... bonorum receptio

Haec autem ... interpretatio ... [illegible] ... formula ... [illegible] ... bonorum ... [illegible] ... l. 126 ... [illegible] ... bonorum receptio ... [illegible] ... quatenus ... [illegible] ... interrogaverit ... [illegible] ... Salizetus ... Fernandez ... [illegible]

Infertur affirmativa

4.
... n. 20. ... [illegible] ... simulationes ... bonorum formula ... [illegible]

... [illegible] ... responderet ... [illegible] ... adversarium ... [illegible]

21.

[illegible] interdictione [illegible] capturas [illegible]

[illegible] ponit difficultas

[illegible]

[illegible] solvit rationes argu[illegible]

[illegible]

7.

resolvitur an quo jure inducta sit interrogandi et respondendi qui ordo

[illegible] ... quemadmodum [illegible] ... Ordinis [illegible] ... interrogandi et [illegible] respondendi [illegible] ... formulas [illegible] ... Ordinis [illegible] ... legitimas [illegible] ... rationi et [illegible] ... personarum [illegible] ... obligationis [illegible] ... interrogat. et respons. [illegible] ... Ordinis [illegible] ... legatis [illegible] ... interrogandi et respondendi [illegible] obligationis [illegible] ... Ordinis [illegible] ... ab initio Ordine [illegible] ... interrogandi et respondendi [illegible] ... interrogationis [illegible] ...

in bonis ... eidem ... bona libera ... sanctiores ... respondent ... sequentibus ...

Dicimus sup. ... bona dicitur ... Boltag. ... Explicat ... juramentum ... patronis ...

... in primis ... liberti ... juramentum ... ex interualo, donum, aut munus, aut operas ... juramentum ... juramentum, ... in bonis ... jurare ... de liberto ... promissionis ... liberto ... de dono aut munere, aut operis patrono ... juramentum ... in summa ... quanquam ... divini numinis ... solo aut religione juramenti ... sufficiat ... in omnibus juramentum ... Boltag. ... ad ... 2 dicitur ...

... de liberto patrono ... aut munus aut operas ... juraverit ... 13 ... liberti ... bona ... 188 ... Boltag. ... adversus ... Francisco ... 22 ...

[illegible] 9

[illegible] ... 18 ... [illegible]

In quo dixerat liberti ... juramentum ... [illegible] (margin)

9.

juramentum ... [illegible] ... Quandoque ... [illegible]
... [illegible] ... ber juramentum
... [illegible] ... patrono ... [illegible] ... personarum
... [illegible] ... potentatis importat. Quandoque quidem hoc juramentum
liberti ... [illegible] ... generaliter dicitur ... juratum ...
... [illegible] ... Cuius emolumentum ... [illegible]
... [illegible] ... duorum ... [illegible]
... [illegible] ... Bart. ... [illegible]
... [illegible] ... Gomez. ... [illegible]
... [illegible] ... ad ... [illegible]
... [illegible] ... 3. ... hoc ... minorum juramentum
... [illegible] ... juramentum ... minoris, ... [illegible]
... [illegible] ... jurato ... [illegible]
... [illegible] ... jurata ... [illegible]
... [illegible]
... juram. ... substantia ... [illegible] ... jurato ... [illegible]
... [illegible] ... juramentum ... [illegible]
... [illegible] ... juram...
... [illegible] ... ad ... [illegible]
... [illegible] ... de ... [illegible]
... [illegible] ... in ... juram. 22 q. 1. ... Chrisostom. ... [illegible]
... [illegible] ... apud Deum ... [illegible] ... et ... [illegible]
juram. ... minorum ... [illegible]
... [illegible] ... juratum ... [illegible]
... [illegible] ... Canonistis ... [illegible]
... [illegible] ... et juramentum ... [illegible]
... [illegible] ... 2. ... [illegible]
... [illegible] ... juram. ... [illegible]
... juravit ... [illegible]
... [illegible]
... [illegible] ... ut juram. ... [illegible]
... [illegible] ... jurat. ... [illegible]
... [illegible] ... juratum ... [illegible]

[illegible] o. [illegible] [illegible] quaestionem 1. 7. [illegible] [illegible]
[illegible] de [illegible] Tit. 2. 2. 1. 87 Bar. in l. [illegible]
56. [illegible] [illegible] parentes [illegible] et [illegible]
[illegible] juramento [illegible] aut ingenuorum aut libertorum [illegible]
[illegible] [illegible] [illegible] [illegible] requiritur [illegible]
[illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] licet [illegible] et libertorum [illegible] juramen[illegible]
[illegible] in eo [illegible] [illegible] [illegible] [illegible] [illegible] juram.
[illegible] ingenuorum [illegible] [illegible] [illegible] [illegible]
[illegible] Cuj. l. 22 [illegible] 7. [illegible] 10. 3. [illegible] 12 [illegible]
[illegible] [illegible] [illegible] [illegible] n.° 12 Fo[illegible] dialogo
[illegible] [illegible] [illegible] [illegible] [illegible] Donel. 10 24 [illegible]
juram. [illegible] [illegible] [illegible] [illegible] [illegible] jurant [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] Juran. [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] 9. 1. [illegible] [illegible] [illegible], dummodo nulliam [illegible]
[illegible] [illegible] [illegible] [illegible] dictionum [illegible] impediret. ita
ut [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] juramentis, et libertorum et [illegible] [illegible], [illegible]
[illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

Ex [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible]
libertorum [illegible] ingenuorum [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible]
[illegible] accedat [illegible] et [illegible] voluntate [illegible], [illegible] [illegible]
[illegible] juramentum [illegible] [illegible] et voluntas tacita, [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]; [illegible] [illegible]
[illegible] tacitum etiam [illegible] voluntate [illegible] [illegible] 18 [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pacti et
[illegible] [illegible] [illegible] [illegible] [illegible] ita [illegible] [illegible]
[illegible] l. 1.° [illegible] 2. 4. [illegible] 1. n.° 10. [illegible] [illegible] 2.°
[illegible] [illegible] [illegible] [illegible] [illegible] 4. [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

A.

[illegible] sollicitationis [illegible]

[illegible] Cardinalis [illegible]

[illegible] acceptatio partis [illegible] jurata necessaria [illegible]

[illegible] acceptationem [illegible]

[illegible] partis [illegible] Ant. [illegible] de [illegible]

[illegible] Eccles. Jason, in auth. [illegible]

[illegible] n. 20. [illegible]

[illegible]

... [illegible] ... C.

... deiuram.[to] litis operarum ... [illegible] ... decisorum ... si inter patronum et libertum de iure operarum ... [illegible] ... litis ... [illegible] ... in nostra l. ... [illegible] ... si libertus ... deiur. iur. ... de iuram.[to] ... litis operarum ... [illegible] ... de operarum promissione ... [illegible] ... efficaciter, ex ... [illegible] ... principaliter ... [illegible] ... explicat. ... [illegible]

11.

... [illegible] ...

... iuram.[ti] ... [illegible] ... libertorum ... [illegible] ... summa ... [illegible] ... deducitur, ... [illegible] ... iurisiurandi ... [illegible] ... remisit, ... [illegible] ... iurandi ... [illegible] ... remitter. ... [illegible] ... non dubitamus 20. ... [illegible]

... [illegible] ... iurandi ... remittit ... [illegible] ... non dubitamus 20 ... [illegible] ... iuncto ... [illegible] ... Ratio autem ... [illegible] ... iurandi ... [illegible]

... [illegible] ...

... [illegible] ... 71 ... [illegible] ... 2 ... [illegible] ... frustration ... periculo ... iurandi ... vinculo ... [illegible] ... iuram.[ti] ... [illegible] ... adaequata ... [illegible] ... peccatis ... [illegible] ... Extra ... 2 ... [illegible] ... negotiis ... [illegible] ... religio ... [illegible]

excogitavit, quæ et religione iurato Coherceret, et cuiusque status ejus [illegible] et efficaciter adimpleret. Et efficiter a[illegible] interveniente [illegible] iurandi [illegible] iurandi dicti Armira, [illegible] totum [illegible] [illegible] ratione [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

12

[illegible]

[illegible]

Levare [illegible] ... juvare omnino debet, neque jurandi [illegible] ei remittit, ... quod servus jurans ... quando ... demanum. ttt. (inhaec ... a juramento ... erga Deum ... juramenti ...) ... habebit expedita facultate ... sub juram. injuncta ... servus ... in servitute manet ... conditionis ... liber sub conditione ... expeditis peculiaribus ... conditione implere, l. 5. S. ... de ... l. ... ff. ... hereditand., ... tamen ... de servo ... peculiat ... Deo ... cessans ... juram. inanita est ... acquirere ... libertatis ... sicut ... institutionis et legati ...

6 ... 3 ... 66 ...

l. cederedig 213 de V. S. servus vero n peculiarius, ante acquisitio-
ne vi servitii nec pecunia habet nec expedita dandi facultatem
d. l. 9. § ult. ff. de solut. ... datum. Deinde neque in illis modi ad-
implendi facultate habet, licet enim modi vinculo acquisitionem
legati ... potius ... l. eas causas 80 ff. de solution. et
demonst. minil omnino tamen ante acquisitionem legati cavere legitime de-
bet, de implemento modi ... d. l. eas causas. Servus autem cavere leg-
itime n potest, q. iniuriet ... obligati ... l. 14. ff. de oblig. et action.
l. q. ... servo ... ergo si conditio jurandi servo n gravatio
remitteretur ... necessario est ... definiendi domini ...
periclitetur: ... neque in specifica forma jurandi ...
impediri, neque deinde ... impediri ... jurant. ...
tanetur è. ... hanc conditionem servo ... remissa
... recte ... docet q conditionem jurandi remi ... li-
bertatis ... videtur. Atque ideo ... equus et meius, l.
l. § ... Servus jurans ... quo ... liberatus ... aut annis
defunctorum ... licet enim servus jurans ... tantum
sub perjurii periculo obligetur, ... non obliget l. servus
24. ff. de ... liberè ... tamen ... religio ...
... jure gentium l. 1. § ult. ff. de just. et jur. Servos ... obligationes
... obligare ... dissensi ingenio ...
... jurare ... tamen ... et ... ...
... liberatus è Donel. ... 52 ...
... l ... c. 2. = ... et illud tandem ... quod ubi ...
perjurii periculum n è jurament. ... remittitur ... municipio ... tit. ...
et demonst. ... jurans ... n ...
... tamen ... metuendum n è q. sit perjuria
... conditio jurandi n remittitur, ita si ... ab ...
... timeretur. O =

Postremam ... in hoc Artic. summo ... notandum
dat circa ... juramentas servus quae aut decisoria, aut confirmatoria
Doctores ... appellant. ... juramenti ... mentio ...

15

(Doctores

Doctorum meditatione hec triens veniat ratione nam videlicet quod si juramentum illis negotijs taceradare aut alioquin iure positivo vel principijs naturalibus obligandi, ut per quae tantum deserviret, ut et ipsa negotiatione obligationi, obligationem etiam solutionem tribueret, tunc tale juramentum subiectis negotijs magnum pondus adderet ut patet in juramento civilis ..., et si juramentum litis decisorium ... maior 40 C. de transaction. l. 2. ... ff. de jurejurando.

Itaque alij vero si tale juramentum illis negotijs superaddatur, quae alioquin pene ... invalida principijs naturalia obligandi, leges civiles ... adeo ... tunc ... juramentum, dummodo in subiectis negotijs nihil turpe, impium, ... ad se tenuerit, recte posse leges civiles movere, ut vinculum etiam civile super addant. ... in minoribus, et ... l. 2. authen. sacramenta C. si adversus venditionem, cap. debitores, cap. cum contingat, cap. si vero, ad

... tandem si tale juramentum illis negotijs superaddatur, ... nimia naturalium principiorum ... ut ... deficiens ... tunc tale juramentum nihil super addit, ut patet in ... cautionis pecuniae non numeratae, ... l. ... pecuniae ... ex quibus ... dubium ... et ... ut videre est apud Covarruviam in omnibus disputat. ... Joan. Gutierr. de juram. confirmat. ... Mendoza ... de pactis cap. ... 16. ... Menchac. de successionum creatione § ... 5.

... qua ratione ... certa deducitur ... libertorum juramentum, et post manumissionem jurantes obligat, ... vero ante manumissionem jurantes ... obligat ... jusjurandi ... de oper. lib. ... libertis ... post manumissionem

B

jurarint

juris aciviri, ē reverentia obligationis naturalis gratia et vi ipsa manu
missionis, quam magnitudo accepti beneficii, eos ad obsequium re
verentia et obsequia naturaliter obligat, quo circa officiales operae
ad differentiam fabrilium operarum libertos naturaliter obligant. l. li
bertus 26. §. liberti ff. de condict. indeb. arg. l. in operis ff.
eod. tradit regnicola ff. de operis libert., et indigna sit erga patronos in
grati existant, possibiles coactione in servitutem revocantes l. 6. § pinde
ff. de in integrum rest. l. si manumiss. ff. q. metus causa, domus ff. de
iur. patron. quia quid lex. admittitur l. 10 observationum cap. 33, et 21
cap. 6. ubi loquitur post manumiss. de operis liberti iurante obligationi natu
rali existenti hoc iuramentum accedit, ideoque licet religio legis
civilis cogit, ut etiam sine stipulatione et pacto ex patroni ē libito li
bertos civiliter obligaret, cap. ubi reg. 10. regul. junctis juribus
ibi relatis. Nec mirum equidem quoniam si extraneas operas
officiales (quarum promissio ingenuos etiam lex stipulatione oneravent l. legis
pro § 6 in princ. ff. de iudiciis. l. venum ff. si a parente quis manum. l. i. venum ff.
ff. de obsequiis parentibus et patronis) ingenuus sine pacto et stipulatione
id se soluturum iuravit, quod non debet, inaniter obligatur l. itaque o
bis accept. in ... 2. §. 4. ff. ... intracertum. enim, quod aiunt iuram.
ceterum tota nec ratio ante manumiss. cessat quia ante accepta libertatis be
neficium nulla in servis naturalia pria extiterunt, quae ipsos ad angiorem
obligationem naturalem astringant. Deinde nec si tunc de operis iurassent
nec naturali necessitate obligatoria dominos astrinxerit, tamen iurans
sit in hac eadem specie Deo obligari, quod post Accursium observavit Menoc.
cons. 17. ad l. in ... ff. de liberali causa. Sed ideo autem
solet tradi ... quod ... ideo ... servi ...
... nec iuram. ... pro naturali intentionis, ... ipse
naturaliter servos promittentes ingredi obligare, iuram.ta ... in ... dicta
specie, eundem servum de operis officialibus iurantem Deo dumtaxat, non
vero heredi extraneo naturaliter obligaret: quod praeterquam ... erbuit
ret ... directo ... manumissus libertus ... ... et
si vero heredis libertus, ... 10 C. de ... manum. ...

nam.

ff. argum. l. 3. § 5. ... de ... naturali

obligatione ... specie ... iurare, ... luramento ...

ia prima ... obligationis ... dotis ... stipulatione ... Doti Tutore, marito vel ... solemnibus ... Argum. ... l. 6. § 1. ibi, ... aut dari, aut dicto, aut promitti, ... dotis ... a ... promissione ... traditione ... dotis ... Ruinus ... Caius ... l. 2. Cod. ... interrogat. ... et stipulatione ... marito dote dicat. Ruinus ... promittendo dote ... sexta ... Alciato, Petro ... mulier ... dote ... in ... obligationis ... stipulatione ... haereditas ... in ... ex ... iure ... mulier ... dote ... ad ... necessitas ... dotem aut dicere ... dari

B.

...

nu et requisitum e . [illegible] vit. in duabus lectionibus [illegible]
[illegible] sponsa [illegible] lice viter mulieris marito [illegible]
[illegible] que ei dixerit in dotem [illegible] ut docet [illegible]
dicto doti [illegible] e donatio, et regio, [illegible] novatio [illegible]
[illegible]
[illegible] 27. [illegible] decre [illegible]

10

[illegible]

dearum dotis licitis [illegible] exceptione [illegible] ut [illegible]
ita [illegible] et [illegible] ut solemnia [illegible]
[illegible] 10. 1° [illegible] 12 [illegible] 20 [illegible]
[illegible]
[illegible] Corrat [illegible] matrim. [illegible]
solemnia [illegible] ut [illegible] dotis [illegible]
mulier 59. [illegible]
[illegible]
[illegible] missione solemnia [illegible] ita i
[illegible]
[illegible] marito [illegible]
[illegible] maiore) [illegible] tiberianus tanquam [illegible]
[illegible] pandectarum [illegible]
[illegible] Triboniani peccatis [illegible]
[illegible] 77 [illegible]
[illegible] matrim. [illegible]

17.

[illegible]
[illegible]
[illegible] substantia [illegible]
[illegible] quamvis [illegible] actionis [illegible]
accept [illegible] depositat [illegible]
[illegible] Juramento [illegible]
[illegible] deposit [illegible] extra [illegible]
[illegible]

l. vlt. C. de dote cauta non numerata. Tho soicitatio. ead. qto. ini. si amatre, l. 3 C. de iur. dot. Torternius inl. 2. disparatis n.° 6. Fulgos. et Salizet. inl. C. ad Velleian. Iason in rub. ca. n.° 7. Lambertin. de iure patr. lib. 1. art. 4 part. 2 q. principalis Petrus Barb. ad l. 2. § Soluto matrim. 3. part. n.° 26. cum seqq. Lui. 13 Sbrev. p. 28 et lib. 28. Paul. ad Edictum inc. 2. § ite 4. ff. de rebus cred. =

Aquas trotat. tamen si promittens receptas, ipsiusmet promis. dotis difficultas tenet, quia in pura pollicitatione, et dictione nullas existent necessarias gratias solemnitatem, quod Stirre docet inl. audiendo 298. dic. de edi. Edict. circa quando et rm. tinetur, magis ad uiciatione et iaciationem ... quae ad præfationem rebus dotem, obligationem rescinnet. Si vero pactum aut intentiones recip. ad dotis data et accepta, intervenire necessaria solemnitas Iurandi gratia deficiunt. l. 2 eadem § ult. 55. ff. de pactis. Ubi sup. de simplici iudicium promissorio dicebamus quaeque exornat Bard. Ibiprime: cuius Ratione per manus donominis a Imuen. Petro recederunt arbitrantes dictionem, et pollicitationem Aquae ratio civilis mariti acquirit, ex parte de permittentis et ideo infra pollicitationis, quae orenens tenet ... o rutiis, ex parte autem mariti acceptatione, talis tacita de spictione, tunc, iemper ... rege ostenditur, quae non dotis sollicitatione mariti emolumentum exhibit, p. ... t. inl. 3 patitur 18 ... mandari ... dutinatis, itaque acceptatio mariti non tollit ad executione obligationis. Vera dicta ratione sententia cuius in hac secunda parte desideratur. Ita Baldus et Alexand. inl. 9 absenti, ff. de proc. Aldus in ... de privilegio dotis ... parte privil. 1. Gomez. inl. 50 Tauri n.° 19. vivendo. de pact. lib. 2. c. 8 n.° 10 cum seqq. Verumtamen a Communi recedendum etiam quia animo affirmandum est ex nuda pollicitatione verbali, ideo ex Solemni Obligationis certae obligatione civilis actionem in caa dotis oriri pro iure patrim. alleganti. n.° 19. Quae Omnes sine violentia dote ... respondere non ... Nec obst. secundae Observatio quam si ...

pac.

que ... aliorum ad ... ...
... nisi docere, quando ... dicto ... ...
... quinque ... ... obligandi ..., ...
... debitor ... ... juxta dotis marito ... futuro dicit.
... Caius Paulus, ... in hac dict. ...
obligationis ... ... obligationis ... in primis
... paterno ... ...
... dotare ... judicis ... ...
... Scorna ...
... Socinus et ... Petrus Baro ...
... matrim. ... n.° 1° ... ... filia ... n.° 7.
n.° 2. Deinde de femina nubente ... ...
... se dotare ... ... jure, ... obligata est pr...
matrimonij ... ... dote, arg. ...
mulier ... ...
... famil. ex lucris ... ... cautionem
ex paternis bonis necessario ... ... paterne obligationis
... ... se le...
a ... in ... ...
... ... n.° 17. ... ...
... dote dicit ... expedita ... debitor extraneus
... mulier ... mandato ... mariti ... se dotare)
... debitor ... mandatarius mulieri mandanti ...
... ...
... fragm. ... de dotib. ... ...
... que ... tractans ad ... in l. ... ... de ...
... que ... secundis ... ...
... ...
... juram... ... obligationes ... ...
docuimus) ... ... adjectas, ...
... ... ad ... ...

nisi q. non aliam vim obligandi in existentia supponunt, proinde quod credendum est [illegible] legitimam eorum pollicitationis [illegible] (ea potestas a lege tribuenti [illegible] facta a [illegible] admodum publico [illegible] etiam obligationis prius [illegible] existebant =

Legislatoris similis dotis pollicitationi.

19.

[illegible] quia annotationem tamen sicuti necessarias [illegible] [illegible] [illegible] [illegible] [illegible] aliud [illegible] [illegible] [illegible] [illegible] pollicitatio [illegible] [illegible] semper [illegible] [illegible] [illegible] [illegible] personis [illegible] [illegible] [illegible] [illegible] de extraneaveris [illegible] dotis [illegible] etiam de [illegible] matres [illegible] [illegible] mentio [illegible] [illegible] pollicitationis [illegible] [illegible] atque [illegible] [illegible] [illegible] [illegible] [illegible] pollicitat. [illegible] [illegible] cum similibus [illegible] excipiendi ff. [illegible] [illegible] de jure dotium [illegible] [illegible] ff. de [illegible] dotis denique qualitas personarum pollicentium pollicitationis qualitatem demonstravit [illegible] opiniones quas circa pollicitationis [illegible] [illegible] [illegible] [illegible] in satis [illegible] recentiores quandam aliam detendentes adfirmare [illegible] et [illegible] dotis [illegible] reperi [illegible] sic 25 et [illegible] Si cum duabus seqq. [illegible] ff. de jure dot. [illegible] [illegible] [illegible] debitori suo marito [illegible] futuro [illegible] ipsius in dotem dedit [illegible] sibi [illegible] deberi [illegible] [illegible] [illegible] [illegible] infacere ut docet [illegible] [illegible] [illegible] excepti[illegible] pacti et sic 25. [illegible] ff. de jure dot. [illegible] perspicuas.

quoque [illegible] [illegible] [illegible] [illegible], quinimo maritus [illegible] ad dotis restitutionem soluto demum matrim.[illegible] [illegible] [illegible] maritus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] inde in [illegible] specie dotis pollicitationis [illegible] [illegible] [illegible] formula [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] [illegible] in aliis pollicitationibus. [illegible]

[illegible]

Jus pieci inricitat. ad R. in l. ouida 5. C. cit. [illegible] [illegible]. tamen
ex matrimonio lauentius e a Donello lib. 12 Comment. c. 24. etiam Commen
tario ax. in l. 10 [illegible] repareri docent, adeo dictam uel ex
dict. [illegible] aduersus narratas ab ipso perit. [illegible], utroque
ex ua [illegible] [illegible] tam [illegible] [illegible] extraneos di
cat: [illegible] que [illegible] [illegible] Donell. extraneos eh
[illegible] [illegible] ex [illegible] [illegible] [illegible]. Monet
Donellus [illegible] [illegible]: [illegible] quolibet [illegible], aquas
cunque per [illegible] [illegible] nasci, nam que [illegible] [illegible]
[illegible] [illegible] separatione [illegible] [illegible], [illegible] extraneos, 6.
[illegible] [illegible] [illegible] [illegible] [illegible] conditiones, [illegible]
extraneo nasci, [illegible] ex, [illegible] matrimonij [illegible] acquisitum [illegible]
[illegible] in matrimonium [illegible] [illegible] [illegible] [illegible] suo [illegible]
[illegible] l. A. [illegible] matrimonij, [illegible] obligationis [illegible] [illegible],
[illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible]
pertinet.

Cpt. secundu. De neces-
sitate Ordinis, interrogandi, et res-
pondendi; et Vtrum hic or-
do naturale principium.
Sit obligandi ex jure
gentium; an ex jure
ciuili Romano-
rum.

N.o 1.

Immunes liberi, et doti dilationes [illegible]

[illegible] nostra [illegible] quatenus [illegible] [illegible] [illegible] in precedentibus [illegible] [illegible]: superest ill.ma [illegible] [illegible] [illegible] [illegible] [illegible] quae [illegible] [illegible] ex canonizata fere doctorum [illegible] nihil aliud est, quam [illegible] ordinem [illegible] [illegible], ut necessario [illegible] interrogationi [illegible] [illegible] [illegible]: [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible], quo circa [illegible] [illegible] [illegible] [illegible] [illegible] metaphoricus et enigmaticus, [illegible] enigmatis [illegible] interrogationis significare [illegible] ex [illegible] Preciano [illegible] constitutum [illegible] celebre in l. 1.a § [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] interrogationem ponere [illegible] responsionem [illegible] [illegible] [illegible] [illegible] 1.° § 15 n.° 1.° [illegible] 5. [illegible] [illegible] [illegible] [illegible] 27 [illegible] 27. [illegible] 1.° [illegible] [illegible] 29. [illegible] [illegible] [illegible] ordine interrogatio [illegible], [illegible] [illegible] responsio [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] simul respondere [illegible] [illegible] [illegible] l. [illegible] 26 § [illegible] [illegible] [illegible] [illegible] 7. [illegible] [illegible] [illegible] 27. [illegible] [illegible] [illegible] [illegible] [illegible] 14. [illegible] [illegible] 30. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] interrogatio [illegible] responsio [illegible] modo [illegible] modo [illegible] [illegible] l. 1.a § [illegible] l. [illegible] 15. [illegible] [illegible] [illegible] 30. [illegible] [illegible] [illegible] [illegible] [illegible] circa [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 10 [illegible] [illegible] [illegible] Petro de Ubaldis [illegible] tract. de [illegible] [illegible] de [illegible] [illegible] n.° [illegible] [illegible] circa [illegible] [illegible] [illegible]

Ceterum [illegible] ad [illegible] [illegible] disputationis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] secutum [illegible]

2

C

tunc

-2-

[illegible] interrogandi et respondendi ordinem tanquam substantialem stipulationis formam [illegible], quaestio post Alciat. [illegible] et [illegible] in [illegible] 14 [illegible] 36 [illegible] nimirum stipulatio ex suis principiis naturalis obligandi, perfectissima est [illegible] conventionum, atque [illegible] nominatim [illegible] et [illegible] 1. 5. [illegible] de [illegible]. [illegible] perfectionis et excellentiae ratio a deliberatae voluntatis, et [illegible] maturitate desumitur, quae ex interrogatione praecedenti [illegible] nimirum et jus gentium et jus civile [illegible] [illegible] habent certa animi destinatione. [illegible] obligationis [illegible] subire [illegible] praecipitanter [illegible] potius explorata [illegible] quae [illegible], cum vero [illegible] repetitores de liberatissima pacta [illegible] [illegible] ei [illegible] geminatas [illegible] alias similia, ex matura deliberatione [illegible]: [illegible] (praeter paucas species pactorum legitimorum [illegible] in l. 5. et 6. ff. [illegible]) vim potestatemque legislator Civilis dispensavit, l. juris gentium 1. ff. [illegible]. Cum vulgaris [illegible] dicti pacti nullum [illegible] principium [illegible] ex suis principiis [illegible] deliberationem in voluntate [illegible] causam [illegible]. [illegible] circa ipsamet pacta geminata utroque nuda atque in [illegible] pactorum [illegible], vim Civilem obligandi non habent ut [illegible] communis [illegible] Cujacius 22 [illegible] c. 7. [illegible] lib. 5 declarationum c. 67. n° 5. [illegible] ad l. 1. ff. de Oblig. et actionibus: [illegible] ad [illegible] sub. n. 19 et 35. Ceterum [illegible] in qualicunque stipulatione [illegible] ordinis necessitatem principium illud adhiberet, quod est alienum voluntati explorativum et tentativum, ideo jus Civile magnum synalagma, id est magnam causam [illegible] promissionis subesse [illegible] [illegible] vim potestatemque tribuit l. 1. [illegible] ult. ff. de pactis l. 1. [illegible] ff. de [illegible] 20. quod non ita [illegible] accipiendum est [illegible] Renardo lib. 2. Variar. c. 5. ut si docendi vel jocandi causa stipulatio interposita [illegible] obligatio ipso jure oriatur per exceptionem [illegible] elidenda; quinimo si necessitas ordinis aliquid persuadet id maxime nullum [illegible] ex interrogatione et responsione obligationem oriri nisi et graviter, et serio, et obligationis intentione interponatur: quippe adhuc interponitur, ut serio et graviter promittat, atque id [illegible] [illegible] damnat [illegible]

int[illegible]

in l. 3. §. 1. ff. de ob. et act. Rualid. lib. 14. Commen. q. 36. lit. 3

1 Cum in hoc articulo explicandus venit Auctor Caij locus lib. 2. instit. tit. 9. ex quo inferri liquido videtur ad formam stipulationis omnino requiri, quod stipulantis Creditoris interrogatio praecedat et promittentis debitoris responsio sequatur: quinimo sufficere quod promittens debitor per interrogationem promittat, id est promittendo exquirat Creditoris voluntatem, utrum velit necne promissionem suam acceptare. Consulti verba sic habent: Verbis fit obligatio ex interrogatione dantis, et responsione accipientis [illegible] universa doctrina circa formam stipulationis destruitur, et [illegible] pactorum formam confundit. Quippe si civiliter obligatio efficax tunc oritur quando verborum conventio a[illegible] inchoatur, nihil firmum circa naturam conventionum substantiae stabilire deinceps poterimus. Ut planius huic argumento respondeamus transcendentalis quaedam doctrina in hac [illegible] traditam observanda est, nimirum stipulationes praesertim illas quae conventionales appellant, [illegible] promiscua quorumcumque negotiorum frequentia in usum recepta fuisse l. 5. §. conventionales 3. ff. hoc tit. Itemque inter omnes obligationes perfectior et expressior illa fuit quae ex interrogatione resultabat ideo viri negotijs ex quacumque obligationum forma subiectis stipulationem frequenter superaddebant quae idcirco conventionales appellant, quod ex subiectis conventionibus et negotijs pendent d. l. 5. §. conventionales. Paulus 5. sent. tit. 7. § 1. Donell. q. 14. Comentar. q. 30. lib. ad Paul. 2. Bijnk. et 10 observ. c. [illegible] Alciat. in l. 2. ff. de reb. cred. et Comenter. concurrunt in d. l. 5. §. Conventionales. Praeterea, stipulatio cum vero pluribus diversis quemadmodum illa negotia firmabat quod adijciebatur aliquibus contractibus ideo adijcit ut negotia quae ex sui natura conventionis potestas civilis obligandi non inest, efficacia deinceps per adiectas stipulationes redderentur: proinde quod praedictas stipulationes personales [illegible] ut saltem [illegible] implerent conventiones illas quae alioquin vi civili carebant ut patet in pactis nudis et alijs conventionibus inutiliter celebratis, ita adeo 14. Coniectur. c. nuda § C. de [illegible] sing.

C

[illegible] stipulatio

l. stipulatio 88 § at. iqui 2. et l. 1. ff. trad., ramentis verum sit, ipsas
enim societas, stipulationes et iam nominales plerumque fateres dunmodo
subsecuta novatio iure facta exacta habitat & sidiuisionis l. 1 ff. de
pactis. et tota 6. c. de transactione l. ex placito. 3. c. de rerum permut.
l. fidei iussoris 2. ff. de i diti. de leb. Et inde dicta Juristinales sti-
pulatio. Et ideo plerumque superadduntur. Si societarie negotiis incli-
t. catio, & ideo potius ut novo vinculo superaddito fortius debitores obstrin-
gantur, ubi tangit in omnibus negotiis et conventionibus legitimatis, qq stipu-
latio, sine animo novandi adjicitur l. 2 in fin. & l. unicum 28. ff. de novation.
l. 99. 99. ff. de V. O.

4.

Inter dictas autem causas seu quas conventionales stipulatio
subiectis negotiis super additur, damus illam quae in specie mutui frequen-
ter intervenit, de qua inde vitanes causas etc. loquitur imp. dicto loco institutionis
quippe perpetuum est, ut ex mutuo per traditionem facto condictio certi ex
mutuo nascatur, q. si in ipso dato stipulatio adhibeatur, ideo censetur
adhibitas ut actio ex mutuo supprimatur, solaque certi condictio ex stipu-
lat. sineat. Quod non ita accipiendum est quasi obligatio ex mutuo semel
orta, per stipulationem interveniente adiectam novetur, quinimo ita
accipiendum est, ut nativitas actionis ex mutuo creditor impediatur, solaque
condictio certi ex stipulat. oriatur, quandoquidem nascitur mutui dato videtur
intervenire creditor, ut actio inde nascatur, sed potius ut stipulationis
causa, et formalitas impleatur, aliorum stipulationis causa, l. sitas
o. §. dit. cum l. reg. ff. de novat. l. sitam 126. §. Chrysogonus. Vid. superi.
ff. de V. Ob. l. certi 7. §. 2. ff. de reb. cred. Arg. ex q. ita intelligendi
in l. 5 § item duabus legibus legg. ff. ad ff. ad. et adjiciendus est
observ. in l. 2 §. dit. ff. de reb. cred. juxta Cujaci & Alciati interpreta-
tionem post Maur. ibidem et 25 observ. n. 18 cum enim mutuum fecessisse
re exigit dicitur aut solo iure utrans l. 2. cum seq. ff. de reb. cred. sic
in l. et q. mod. re contr. oblig. nihil ominus hoc docet ibidem Paulus, tamen
ubi creditor in credendo iure quadam actu ad obligationem comparandas
interposito debeat stipulat. quod tantundem valet ac si diceret
actus stipulationis in causa credendi ad obligationem comparandam, unice

interponi solet. Quia vero ex mutuo solo obligatio nascitur aut novari, vel solum ex interposita stipulatione, quandoquidem mutuum per interventum stipulationis adjicitur; quae alias quoque dicitur per exceptionem doli mali. Vivianus l. 2. per totum ff. de doli mali et metus; Caj. lib. 3. observ. cap. 18 et 28. Paul. ad Sol. Alciatus Obligatione. Brisonius de novation. ind. l. 6. et 7. ff. eod. tit. Donell. 16. Comment. cap. 20. Ex quas admotat. iis pingat. ad predictam Caj. locum interpretatio: nimirum quod ex interrogat. danti et respons. accipientis obligatio utrorumque nascatur, sin tamen mutuum rectissime dicitur, quod Creditor qui mutuum dat, tantamque pecuniam sibi reddi a debitore accipiente stipulatur, qua specie, ut proprie acrius quae obligatio etiam exprimeret ita loquitur. Obligatio utrique obligat. ex interrogat. danti et respons. accipienti; idem ex interrogat. Creditoris mutuum dantis, et respons. debitoris mutuum accipientis, solo debitoris obligatio nascitur. Ex quo ibi praedicta stipulatione non incipere a promissione danti, sed ab interrogat. Credditoris ad debitorem directa, ei ea intentione ut donet e contra posito ut debitor accipiens per stipulationem duntaxat supreso modo obliget ita Fab. post Cujac. et Alciat. in realli ad dig. in d. l. 2. §. 1. tit. ff. de reb. Cred.

Occurrit hic magna quaestio circa stipulationis substantiam et originem. Utrum scilicet stipulationis a jure naturali gentium, origine, forma, et essentia manat, sicut reliqui contractus nominati, emptio, societas, mandatum, et locatio, quos a jure gentium introductos esse nemo ambigit: in qua quaestio Antecessores nostri pro jure Civili stantes, jus naturale gentium fere deterruerunt a te re nec stipulationis substantia et forma, a jure tamen Civili introductam fuisse et juri gentium incognitam, inferentes inde, quod ex solo stipulationis, nec naturaliter nec civiliter obligari potuit, aut servus, aut captivus, aut deportatus, aut peregrinus, et plane eo tractatio est hac quaestio ineunt ex pignat. exposita, cujus contractus cognitio requirit, sub indiqua iure comparabili fructu, naturalia civiliaque obligandi principia distinguere, in quorum dist. praeceptores nostri magnopere insisterunt, tota nec.

G. Utrum stipulatio sit juris gentium nec ne.

omnium.

Venit Operaepretium q. declaremus Doctorum responsa circa stipulationes, novationes, fideiussiones, et acceptilationes quarundam personarum exequentes, utpote servi et his similibus; nos autem breviter in huius quaestionis tractatione, fundamentum ex hierarchia eius resolutionis, intima etiam omnium intima gentium iuris gentium notitia doceamus. Itaque nobis hic dicto certum sit ipsam stipulationem, quoad originem, formam et substantiam iuris naturalis gentium esse, sicut emptio et locatio, et reliqui ipsius quos communis schola naturalis gentium attribuit, tamen [illegible] veridicum [illegible] aliqua esse iuris civilis [illegible] habere, quae magis ad denominationem extrinsecam quam ad veram ipsius substantiam pertineat, quae civilia ornamenta in reliquis etiam iuris gentium [illegible] [illegible] civiles potius quam naturales ipsius, aut sunt, aut appellentur. Illustrantur Alciatus, Algerius in l. ex hoc 5. ff. de just. et jur. n. 3. Covarruvias 2. Variar. c. 5. Forcatulus dialogo 72 et 73. Nicolaus Boerius in tract. de ordine grad. 2 part. n. 53. Valtenus 1. miscellaneorum c. 11. Mendoza [illegible] Santolalia primarius Doctor ad [illegible]

Stipulatio juris gentium

6.

Acceptatio dividi

l. 1. an inutilis 8. ult. ff. de accepti.

Hec dicto. auctoritate et ratione probari. Auctoritas est Ulpiani in l. an inutilis 8. ult. ff. de accept. quae dicit ipsis verbis docet acceptilationem esse juris gentium distractum quoque juris gentium [illegible] exque [illegible] inter [illegible] deducit: primus est ut omnino vero vulgari idiomate celebrari possit, quod de ipsa stipulatione idem [illegible] docet in l. 1. 5. ult. ff. hoc tit. [illegible] ipsius civiliter tantum, verum etiam naturali ratione, ipsius et distractus ipsorum [illegible] quacumque ommium vera lingua celebrari recte potest. Secundus autem [illegible] est q. [illegible] servus in causa nec peculiari, nec dominica, [illegible] stipulationes obligatus, possit per [illegible] liberatoriam stipulationem [illegible] per acceptilationem liberari. Nimirum adhoc ut liberatio per acceptilationem stringat necessarium omnino est ut obligatio accepto lata [illegible] sit obligatio, d. l. an inutilis 8. 3. acceptum 3. [illegible] ult. ff. eod. tit. [illegible] [illegible] vendit. [illegible] vero si servus in dominica nec peculiari [illegible] [illegible] causa obligari [illegible] stipulationes [illegible], quae per acceptilationem [illegible]

er

... ...

verissime ne, ... quae distrahunt ... Liberantes, jurisgentium est, quia ex debito et distractibus juris gentium servi etiam obligantur et liberantur, naturaliter l. si ... 64. ff. de solut. et indeb. l. servus 14. ff. de obl. et act. quae effectus ... Ulpiano ... Considerans ... expedit ... Romae ... Sanzano ... Obligat. praeter peculiares et Dominicas ... per ... civiles obligari ... ff. de pactis l. in eu ... 178. ... ff. de ... Doctor ... excellenti ... honorariae obligationes, sive ... adversus patrem et Dominum: Obligationes autem honorariae nulla alia esse poss. ... in causa peculiari et dominica d. l. in eu 19 § ... ff. de ... ff. de pact. ... subterfugio ... mineur ... Obligatione ... ex ... infert ... peculiari et dominica Obligat. per stipulationem ... Servos et ... Filios ... descendit ... obligationes ... peculio ... acceptilationes ... obligati ... persuadet ... persuadet quoniam ex secundo ... sententiam ... inferre

Examinentur ... Servi et Filii ... quo loci Servus ... Domino ... naturaliter Obligari, atque idcirco ... obligationi tanquam naturali fidejussor ... Instit. de fidejussor l. 2. l. 6 § ... Cod. ... de fidejussoribus ... adversarij respondere ... naturalis obligatione ... Dominum per stipulationem,

promittat servus acquiri, quamvis casu non sit peculiaris nihilominus tamen ex
adstipulante domino ita promittente capacitatem civilem ex iure tacito [illegible]
servitutis [illegible] mutuare quod servus quod a domino [illegible] promittente [illegible]
iam ex parte domini [illegible] et promittente stipulari [illegible] pater
in materia: [illegible] obligationem saltem naturalem ex [illegible] stipulationi
servus acquiri sicut ex alio quocumque [illegible] iuris gentium inter dominum et
servum celebrato [illegible] ubi [illegible] l. in [illegible] 19 § 1° ff. [illegible]
peculio l. sed 62 ff. de [illegible] [illegible] hoc respondendi genus ex
[illegible] ind. l. 8 § [illegible] ff. de accept. qui [illegible] in l. [illegible] parte
[illegible] servus [illegible] extra casum honorariae obligationis [illegible]
[illegible] specialem civilem capacitatem ad actum stipulationis gerendae [illegible]
[illegible]: quando quidem extraneis personis [illegible] [illegible] supponit [illegible]
extraneas [illegible] tacitum stipulandi ius [illegible] adversarii admitteretur
[illegible] aliquid [illegible] necesse [illegible] capacitatem stipulandi, et [illegible]
[illegible] obligandi, tam apud [illegible] ind. l. 8 § [illegible] ff. de acceptilation.
quam apud Paul. ind. l. 40 § [illegible] ff. de fideiussor. ex natura ipsa [illegible]
[illegible] quod cum iuris gentium sit stipulatio bene a servis [illegible] iuris gentium
[illegible] sicut alius quicumque naturalis [illegible] d. l. sed 62 [illegible]
in [illegible] d. l. [illegible] 49 ff. de pecul. l. deportatus 15 [illegible] et relegatis

Explicatur l. Stichus 24 ff. de statulib.

[illegible] secundo loco, Marcelli responsum [illegible] in l. Stichus 24
ff. de statu lib. [illegible] ibi [illegible] testatoris [illegible]
sub [illegible] si heredi 10 promiserit, [illegible] heredi operas daturum se iura
verit quaeritur de effectu alterutrius [illegible], et respondit [illegible]
impleri si heredi [illegible] 10 servus [illegible] illa adiecta ratione,
[illegible] spopondit [illegible] aliqua [illegible] dici potest [illegible] non sit [illegible] obligatio
[illegible] [illegible] obligatio civilis [illegible] servus [illegible]
promittens [illegible], obligatio tamen naturalis [illegible] [illegible]
[illegible] dicere [illegible] promittendi quam [illegible] [illegible]
[illegible] naturalis habiturum; [illegible] [illegible]
[illegible] dici [illegible] potuisset ex [illegible] casu; l. 9 iuram. de operis [illegible]
servum adhuc in [illegible] nec naturaliter [illegible] [illegible] iurando
ff. de oper. libert. [illegible] [illegible] [illegible] [illegible] ad [illegible]

[illegible]

[illegible] ind. l. 56. [illegible]

[illegible] libertas [illegible]

[illegible] Capacitate [illegible]

[illegible]

2. [illegible] Civili

[illegible] Civil.

civilis Arist. 7. Ethicorum lib. 5°. retoricar. cap. 13 et Theophil. ad §. dicitur justiniani: licet dicimus jus gentium ei naturale dicitur ut jus gentium ajurena tura[?] omnibus animantibus communi distinguatur, jus enim naturale ... rationem naturalem quod naturali instinctu et sensu ... l. 1. § jus ff. de just. et jur. §. 1°. inst. de jur. nat. D. Thom. 2a 2ae q. 57. art. 3. Sotus de just. et jur. lib. 1 q. 1 Bachovius lib. 1° de ... cap. 15. Cuj. in l. 1. de just. et jur. Vasq. in juris ... aliique apud Oluat. lib. 1°. comm. Donell. cap. 7. lit. K. dicimus ... jus gentium lege aliqua positiva non indigere, sed tantum ratione qua omnes peregrini gentes ad consensum persuadeat, quidem dicimus quod fieri recte potest, quod aliqua lex civilis positiva apud ... ... rationis ...

Verumtamen haec communis observatio jus gentium non facit quod tamen punire delicta jus gentium sit, quamvis occisor occidatur aut quod membri effractor eodem membro mulctetur ratio naturalis ... evincitur sed solum ratio civilis prudens, et politica alicuius populi ad cuius exemplum reliquae gentes ... receperunt ut bene notavit ... de pact. cap. 1°. n° 14. ... cap. 54. n° 4. et 5 et ... Fortunius Garcia in l. 1°. § jus naturale ff. de just. et jur. n° 39: itaque ad juris gentium ... non sufficit exemplum alicuius populi prudenter ... necessaria ... naturali, quae in ... necessario persuadeat veluti religio in Deum, amor in patriam, reverentia in proximum, sepultura mortuorum et dominiorum ... l. ... ff. de just. et jur. ... egregie ... adversarii ... Cuj. ... qui existimantes ... jus civile Romanorum ... tamen ... exemplum Romae ... gentium ... stipulationum ... circa jus gentium ... in l. 8 §. ... ff. ... indubitanter quod ... exemplo civitatis Romanae ... ad ... imitationis moverentur, nequaquam ... gentium ... rationale necessaria

inegue observata aliud e xiemoty prudens et politicus q. renocan. in veniuadet, jussiue stipulationis ut. eg in Videbimus, ob. et bonitus necessit. premadat. sicut emptio, et reliqui Jetuy nomi nati, atque inkominati q. pp hanc cag. juri gentium ff. 1. § et 6. et 7 ff. de pact. l. ex hoc jure § ff. de just. et jur. Cuadnotanda in illud et succidaneg. videlicet jus gentiq. fine hujus juris pra dica ex antiquitate temporis in extimari p. ex illa suerat a noe naali, que ore gentes inquo cangue Cuo ad usus q. necella rio moueat in' mirty antiquibus e permutatio qua emptio et uenditio, quandoquide emptio pecunia, cieta necessario requi rit, l. 1. ff. de 3th. emp. et l. ff. dever. permut. provist. de empt. et uendit. pecunia aut esto, aliij Saturno atribuunt et Tertull. in apollog. tico q. 7. aliij Phedon Argiuo Cy Strabo lib. 8 historiar. aliij liuero Patri ut Plinius Cp. 56. lib. 8 ut Polidor. Virgilius. et devenirimus. Gp. 20 Mendoz. Cdepact. Gil. 1. n. 11, et tamen licet emptio in pert mutat. posterior utraque tn juris gentiq e l. 1. ff. de 3thend. empt. l. 1 ff. dever. permut. q. satis naali quit ado tenque incentas, ea 3 ac leg praltica, tanque Juuiantes. atque intrinseca equalitate q. jus titia plene necessario admisit, d. l. 1. ff. de 3th. empt. illud plane in inficiabimus, scit. cuius aut. Jetus jus generalis ideam sicit. sola cultatiuq Cognitione Cy genere humano in omni statu naturae salui et a e diuisio dominiorum et diuisionis Vtilitas speculatiue inanima statu Cognita fuit, l. 1. ff. de acquir. rer. domi. vbi expridenter et Theologi p. eat Mendoza vbi proxime exercitu aut aut diuisio aut alio Setus diuersis temporibus introductus fuit. l. ex hoc jure § ff. de just. et jur. et ibi Cujt. et in l. 1. in fin. ff. eod. et Forcatulus dialogo 48—

His ita Vtriusque decretoria ratio prima pro stoe ita fot mat. quantis nuda tamen si incipiat a primis. a jure gentium des cendit et naaliter obligat, permittere. ei in nullius voluntate luculenter negauit l. 1. l. 7 in pro § 9. vers ait 12 ff. de pact. li. Schez 97. § naalis ff. de solutionibus. 4 in amplius 89. § 1. ff. ad eg. jure

9. Quanto.

Juventio illa quae incipiens ab interrogat. finitur in prom. ex jure naturali gentium descendit patet 2. sequentia. Juventio nuda incipiens a prom. ex iis principiorum tractatus obligandi longe inutilior atque imperfectior est quam Juventio illa quae incipit ab interrogat. et finitur in prom. quia Juventio facile admittit quoniam indeliberatae et temerariae voluntatis videtur, pro qua causa ciuilis actionis ornam. destituit l. 7. § de pact. et ibi DD. [illegible] nullo fere discrepante. Dico 2. nuda Juventio incipiens a prom. ex eo quod reciproca fides et pudor humanus in eam urget ex jure naturali gentium descendit. quod illa Juventio identidem ex jure gentium oritur, in qua perfidia recipiens excellentior etiam promittentis voluntas utrimque [illegible] cedat. Haec 1. dico. Dico 2. probatur. Quoniam absurdum est rationis naturalis [illegible] atque indecipientis quae essentialiter jus gentium est l. DD. § de just. et jur. ita apud omnes gentes uigere ut interfecta Juventione a prom. incipiens cognoscat suum quod adoptent perfectionem cuius Juventione incipiente ab interrogat. neque cognoscat neque adoptet, nimirum quamuis daremus (quod tamen nunquam dabimus) imperfectiorem Juventionem incipientem a prom. [illegible] ex [illegible] Juventio incipiens ab interrogat. adhuc est in jus gentium, ut naturali [illegible] incipiens [illegible] recognoscere suum quod adoptare excellentioris secundum [illegible] juris gentium [illegible] ex [illegible] rationes [illegible] [illegible] l. [illegible] d. mend. [illegible] l. 2. § [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] l. 5. § [illegible] de [illegible] [illegible] [illegible] tamen debilior [illegible] [illegible] [illegible] eius [illegible] [illegible] [illegible] [illegible] [illegible] perfectionis voluntatis [illegible] [illegible] ex [illegible] obligare [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] l. [illegible] 758. 1° [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] voluntate [illegible] l. 2. § 3. in fin. § de pact.

incipiens

l. in omnibus § 3. ff. de Obl. et act. necessarium è iunctionem illam naturali doi juris gentium magis accedere una ex iis principiorum Obligandi excellentiores danuum ornefert: cum latio Torcanili è dialog. 71 et 72:

10

Affirmatur

hecce exemplo d'piqueo: et alia r.õe emptio et venditio apud omnes popolos ex jure n̄ãali gentium inualuit nisi q. ex ici suorum principiorum. quanda inneqüalitatis perfectionem resecauit, quam ex illo principio rerum in antiquo permutationis q. de fere necessario intercedebat, q.p.e. impossibile, aut saltem ad modum difficile erat, ut in rerum permutatae. Omnimoda equalitas inter res permutatas, intercedere, tamdoaes fun gibiles, modo infungibiles, modo inmobilia, et se mouentia res permutarentur, de quo aerie expaudiendae Henna inter Sabinum, et Fira. culum, quorum quilibet pro Homerum allegabat in l. 1. ff. de vend. emp. et § 2. inst. eod. tit. leg. enim pecuniae signatae potestas in eo maxime eluceat, q. stimationis formae que publicae fi imentia Oia aeque rerum emptionum n̄ãã. ad supremam Equalitatis lineam transferat. l. 1. ff. de vend. empt. l. 34. ff. de Gstimatria l. 1. ff. de edict. trific. l. 2. Siden. et si possibile tamen deuerit per Mendoz. 3 de pact. c. 1. n. 14. Othal. ad Donell. 13. c. 1. lit. L. Bachouius 1° declarationum c. 12 Torcanus dialog. 48 ideo stans inde sciens quo n̄ã n̄ãalis. vtlem emptionis, tamen = si longo Eeo posteriorem admiter et inequale permutationi p. tulit. q. ipse ex prin= cipijs ipsis naturalibus et n̄ãã inua dicas Equabilior, atque excellentior em= ptionis dicas agarebat, q. permutationis inequalitatem omnino resecabat q. si iunctio incipiens ab inuestigatione imperfectionem illam emendat= quae in iunct. apriss. incipiente reperitur, adeo ut omnem indeliberatam te= merariam que Voluntatis fictura remoueat, fateri necesse è ius n̄ãale gen= tium hanc cognoscere, ubi que adoptare, q. vo n̄ãalis id apud oes gen= tes ratione et imertio Veneres necessario euincet: ~~etiam~~ q. enim per= fectior n̄ãa: vte et ille emptionem necessario persuadet, idemque in o. cum sti= pulationis perfectior forma paciscendi apud oes gentes persuadere debet itaque pp hanc rog. in minus sit juris gentium stipulatio l. 8. § 1. ff. de acceptil. quam emptio et venditio d. l. 1a. ff. de vend. empt.

replicabis fortiter

ex Separat. emptionis, et permutationis, in rebus inferri Sequentis ad
Separationem stipulationis et pacti, quibus Separationis potestas juris Civilis
et naturalis. nimirum idipsum Civium rat. emptionis Velus imperfectiorem
Antiquam permutationis emendat Omnimodam quae Equalitatem introdu
cit Civile et naturale scilicet pecunia Cusa, seu nummus signatus
forma etiam publica, et publica stimatio nummorum Vis illa est quae in
Velu emptionis Omnimodam Equalitatem inducit Antiquae quae permuta
tionis Inequalitatem Corrigit l. 1. de Vend. empt. l. 1. ff. de rer. permut.
pecunia autem Cusa, et publica signati nummi stimatio juris Civilis et
naturalis, sicuti ex decentiori numorum signatorum Usu planemitiis
Forcatul. ex Arist. lib. 5 Ethic. c. 5. junctis jis quae supra n° 8. circa
pecuniae Civilem inventionem et Usum Segetimur, ex quo id falsum convincitur.
numorum signatorum Usum recentiorem et atque in omnes populos paulatim irrebrare
pinde quae Civile institutum et naturale. Porro idipsum quod in Velu em=
ptionis ad emendationem permutationis contingit, etiam in stipulat. circa emen=
dationem pacti identidem contingit: quod in Utroque Velu excelentiae et perfectio=
nis non ex jure Civili tantum proficiscitur: quando quidem Ordo et series in=
terrogandi respondendi quae Vis illa est quae nudi pacti imperfectionem Cor=
rigit maturiusque Sensum inducit Donel. 14. comment. c. 36. et ibi Osu=
ald. lit. CC. idem Osuald. 12 comment. c. 9. lit. C. Vbuemb. in paratit.
ad tit. de pact. n° 9. Cornat. 3. miscelan. c. 15. adiciatur ad nra sub.
n° 16. Ordo autem interrogandi, et respondendi solemnitas civilis est.
Cuius rat. plures sic authores Civilem et juris romani stipulationem
esse contendunt eo enim ipso quod sit Ordo inbariabilis solemnis exigit.
l. 1. C. de accept. ptinc. Inst. de V. O. eo autem quod solemnis sit naturalis,
non est. Planctus Civilis l. 1. ff. locat. l. 1. § Ult. ff. de Vend. emp. Cujac. in
l. 4. in fin. et in l. 9. ff. de just. et jur. et in l. 2. ff. [illegible], et Gonzalez.
c. 36. et 14. c. 40. Valentius ad nra sub. n° 4. et 16. cum sequentibus
cum aliis Congestis ad Osuald. ubi supra lit. A. Cuiraei consequens est, quod
non bene ex Separatione emptionis ad permutationem videatur ad Compa=
rationem stipulationis et pacti siquidem in Utroque Velu emptionis

si tamen

12.

et stipulationis tota excellentia ratio civilis et non naturalis.

Pro huic argum.

respondemus affirmando utramque assumptionem esse falsam: falsum enim est receptionem pecuniae cuius usus in causa est et pecuniae publica signatio civilis sit non naturalis: deinde falsum est in celebrandis, seu solemni interrogandi et respondendi ordine in causa esse ut stipulatio sit civilis et non naturalis. Atque imprimis de pecunia tota patet: quod si publica pecuniae signatio civilis foret emptio et venditio non fuisset de iure iuris gentium, quod iura proclamant) sed potius de iure civili dicisset: siquidem principaliter potentior quam de iure naturali, qualis est numus signatus ex civili instituto [illegible], de iure ipsi a famosiori parte civilis tantum fuisset non naturalis, quod equidem falsum est l. 1a § ult. ff. de contrah. emp. quod illud ex quo sequitur identidem falsum est; nec [illegible] probat Aristotelis authoritas lib. 9 Ethicor. cap. 9. ubi enim tantum docet propter indigentiam fuisse numum percussum atque propter equalitatem rependendi. Porro indigentia [illegible] atque intrinseca de iure iustitiae id est equalitas nequaquam [illegible] humanam signaturam esse civilem: alioquin quid dicemus de [illegible] locationis, quod cum iurisgentium revera sit pecunia etiam signata [illegible] quinto § 1. et 2. inst. de locat. l. 9. ff. de iust. et iur. l. 1. ff. locati. Rursus quid dicemus de permutatione quae humani commercij indigentia inducta et tamen naturalis est. l. 1. ff. de rer. permut. l. 1. ff. de contrah. emp. quinimo nos interponimus: eo enim ipso quod indigentia magna sit, atque intrinseca de iure equalitas manifestare [illegible] [illegible] de iure ipso naturali est non civili, quod ius naturale gentium nihil aliud est quam [illegible] ratio quae nos ad equalitatem, et iustitiam necessario persuadet l. omnes ff. de iust. et iur. § 2 inst. de iur. natur. gentium et civili, [illegible] equidem [illegible] diversa numorum signatura aliter enim hispani aliter galli signant: hispani enim peculiari sua signatura quae [illegible] peculiaritatem civilis procul dubio est non naturalis, galli autem peculiari sua pro[illegible] civili. [illegible] animadvertere debuit [illegible] quod ante eum Budeus docuerat in annotationibus ad pand. in l. 1. ff. de contrah. emp. et lib. 3 de asse et similibus. Cap. 2 et

[illegible]

… ciatus lib. 7 parerg. Cap. 17. Sublicet publicae pecuniae signatura est quidem in genere naturalis, pro indigentia et aequalitate Iuris: specialis vero numorum signatura ex regnorum diversitate civilis est. Utique signatio in genere naturalis est, quod autem Leones, aut Aquilas, aut flores, aut boves signentur civile est, extra varia regnorum stegmata; quod etiam ad familiaria stegmata eleganter porrexit Mendoza lib. 3 disquis. cap. 1 nº 14 quum diversa singularum civitatum familiae peculiaribus insignibus utuntur civile aut potius familiare est, vel patet in peculiaribus familiaribus et vetustis domorum: quod autem singulae familiae insigni aliquo generaliter utantur iuris gentium est, pro ipsa indigentia naturalis ad distinguendas scilicet familias; neque obstat quod haec signatura tam numorum, quam stegmatum recentior sit cum genere humano nunquam nata, quod ubi sup. nº 8 in fin docuimus, iustitia naturalis non ex tempore, sed ex ratione naturali extimatur quae omnes populos peraeque pervadeat, ubi recte Mendoza observatime. Ex quo in nulla ad praxim inferre potuissemus tam circa marcas artificum quae circa armentorum marcas supra dicto omittimus.

Iam vero eadem quae denumus signatura circa stratus emptionis diximus de certo etiam interrogandi et respondendi ordine circa stipulationis dicenda sit: quod ubi etiam pridem arbitrati sumus nihil durius, aut a receptis gentium moribus distantius ab adversariis affirmari non, quam affirmare interrogandi et respondendi ordinem a iure gentium circa personales et voluntarias obligationes repudi: quinimo utique ratione naturali, et ut mire ingenito docemur circa obligationes voluntarias nihil tam naturale est quam illius partis voluntatem prius explorare, de cuius personali praeiudicio voluntario tractamus ex quo naturali iure locutiones illae fluxerunt scilicet mutuum rogare, immodatum rogare, precarium rogare, l. sicut certo §. vetus rogavit ff. commodati l. certe §. ult. ff. de reb. cred. l. 2. §. 2 ff. de precario l. 1. in princ. ff. de hered. emptae plane ad obligationes naturales quaecunque inducendas interrogatio et responsio necessaria est sufficit enim quaecunque qualescunque l. 1. ff. de pact. Contra ad obli-

gationes

gationem naturalem perfectam inducendam interrogatio et responsio omnino necessaria est quemadmodum enim ad qualemque alienarum rerum onerosam acquisitionem peccunia signata necessaria non est, sed permutatio sufficit ad perfectam vero earundem rerum acquisitionem peccunia cum desideratur ita similiter ad qualemque obligationem naturalem interrogatio et responsio necessaria non est, ad perfectam vero obligationem naturalem necessaria est, ut ingeneratam lucem haec clamat quae ipse jus gentium est d. l. 9 ff. de just. et jur.:: Nec non ab hoc cardine dimovent Vulgaris illa adversariorum iactatio quod scilicet hic ordo solemnis est l. 8 C. de accept.; cum autem solemnitas seu formula juris civilis est l. 1 ff. locati arg. tex. in l. actio 47 ff. de neg. gest. l. 1 juncta rub. C. de form. sublat.. quoniam ut ia sup. dixi non dicimus in ista stipulationis nulla certa Thorum formula est quae syllabis et numeris alligetur l. 1 § 2 l. quae extrinsecus in princ. et § 1 ff. de V. obl. l. blandimus 12 C. de fideiussor. sed solum ordinarium ordo interrogandi et respondendi, ordinarius autem hic ordo formula Thorum non est, sed ordinata series; vox enim solemne ut ex Prisciano et Marco Varrone docemur vox est a sole et anno composita: sicut enim solis et anni revolutio ordinaria est, ita et dies solemnes ordinarii ff. quae a sole et anno revolvuntur. unde ordo solemnis, seu solemnia Thorum stipulationis Thorum formulam non important. sed seriem interrogandi et respondendi ordinariam, quapropter quoties in jure solemnitatis mentio circa stipulationis dictum reperitur, solemnitas illa non est referenda ad formulam Thorum syllabis adstrictam, quod plane a jure gentium aberraret sed referenda potius est ad ordinem interrogandi et respondendi quod ordinarium et naturalis est sine qua imperfecta, sed de perfecta obligatione naturali loquamur, proinde quod etiam hoc admisso quod dictus solemnitas ad solemnitatem et formulam Thorum referatur adhuc tamen non bene adversarii inferunt stipulationem juris civilis dictum esse ut ia ia videbimus at haec illud longe intolerabilius est, quod adversarii iactant, scilicet ordinem interrogandi et respondendi circa obligationes personales

C.

lege aliqua

lege aliqua positiva inductum esse, et medio juris Doctorum, sed ab ipso juris authoribus introductum; quam jactationem evidenter depressit Forcatulus dialog. 62. nimirum interrogatio et responsio quatenus respondentis obligatio dcernitur, omni positiva lege antiquior est: quandoquidem nulla fere lex est, quae per rogationem magistratus, et populi sponsionem non feratur, §. lex instit. de jure naturali gentium et civili: l. 1.ª in fin. et l. 2. ff. de legibus l. 2.ª §. exactis ib ff. de Orig. jur. quinimo Vir erudite Marcianus ex Demostene probat ind. l. 2. ff. de legibus tota legum potestas a naturali interrogandi et respondendi ordine profluxisse. Imo si apud omnes populos ex jure gentium in legibus ferendis, sanciendisque hic ordo invenitur, quatenus sanctio et obligatio legem decernit, qua fronte adversarij affirmabunt. l. tantum romana positiva hunc ordinem inductum esse. Rursus id ipsum non indigne probatur ex vetustiori Hebreorum populo in quo florente Hieremia propheta (qui longis seculis romanum imperium antecessit) huius usus mentio reperitur. jeremias C. 3. ibi, et scripsi in libro et signavi et adhibui testes et appendi argentum in statera et accepi librum possessionis signatum, et stipulationes et rata, et signa forinsecus; quae loca ex sancto Pagnino ita Pannucius interpretatur in tractatu de jure jur. in lit. C. 3 n.º 11 ut scilicet propheta de se ipso loquatur, qui ex jussu Domini inspirantis agrum emebat, quique emptio ut stabilis adversus omni dolosiones evaderet inquit Profeta se a venditore agri accepisse omnia antiqua possessionis instrumenta, (hoc est significat liber possessionis signatus) simulque instrumentum scripturam accepit, ex qua probabatur agrum ad venditorem titulo stipulationis pertinuisse, seu quodidem est causa possessionis et dominij stipulatione rata, validaque existisse, Videmus adeo antiquae conventionalis stipulatio ad stabiliendas subiectas negotia l. 5. §. conventionales ff. hoc tit.

1 4.

Penes vero enarrata huc usque ratio id tantum probare videtur scilicet interrogandi et respondendi ordinem ex jure naturali gentium descendere, non tamen quod interrogatio, et responsio

possio varie expediri posse, scilicet per nuncium, per epistolam, per nutum, et Enigmata quorum neutrum ad stipulationis formam sufficiat l. 1.a §. siquis vel ti annuisset hoc tt. l. 1.a §. ult. ff. de vend. empt. cum vulgatis, fateri necesse est praecipuum Vborum necessitatem juris tantum civilis esse; quia jus naturale gentium, tametsi ad perfectam obligationem interrogandi et respondendi ordinem requirat, praecisa tamen verba non requirit l. 1. ff. locati l. 1.a §. ult. ff. de vend. empt. quinimo cum jus gentium inconsonanter laboret ut de perfecta voluntate contrahentium constet, qualemcunque modum perfecti consensus explicativum admittit, scilicet nutum, Epistolam, nuntium, et enygma, l. 2. ff. de pact. l. 1.a ff. mandati l. 1.a §. 1.o ff. quod jussu l. obligationum §. ult.o ff. de auctor. tutor. l. pcario ff. de precario. plane hoc argumentum adversariorum Aquileae, quod [illegible] Ascribus statuerimus, in reliquis nullus fere labor est, quia circa fatemur in primis Vborum necessitatem ad formam stipulationis requisitam Civilem omnino esse sicut et nomen ipsum stipulationis Civile est et enygmaticum uti omnes fatentur, ex Paulo et Divo Isidoro et Caesare Justiniano: nihil omnius tamen [illegible] ostendimus hanc Civilem Vborum necessitatem neutiquam posse stipulationi jus Idem ab origine juris naturalis, quoad formam et substantiam principaliorem extrahere, stantem quoad aliqualem extrinsecam denominationem Civium ratione Idem naturalis, Vborum Idem, seu Vborum obligatio appelletur uti in nostra rubrica nominatur. quae tam apriori quam aposteriori evidenter probatur. I 9.

In primis aposteriori quae probatio manifestior frequenzior est, utique manumissiones omnes juris gentium sunt l. manumissiones 4 ff. de just. et jur et tamen manumissio per vindictam, et per censum tot habent civiles solemnitates ut libertatis ipsius, quae juris gentium est quae ad extrinsecam denominationem civilis evadat, pro inde quae manumissio per vindictam et per censum appelletur, hinc ex pura civilia solemniaque verba in manumissionibus adhiberi solita tam ab ipso Domino manumittente quam a magistratu, l. manumissio 23 ff. de manum. vind. Paul. 4 sententiar. tit. 12 arg. text. in l. juridi 10 ff. de manum. vind.

Tractg. [illegible] 117

Revardus q. Variar. C. Petrus Fab. lib. 2. semest. Cap. 20, huc etiam
pertinet vindictae impositio, id est levis percussio virgae, quam
Lictores portant, easque in caput manumissi levi verberatione im-
ponunt, l. 1. manumissio 23 ff de manum. vind. l. apud eum 14. §. 1 ff.
de manumiss., l. igitur 125 § 1 ff de lib. caus. huc etiam spectant pi-
leus et rapis [illegible], et innumerae aliae solemnitates l. Unic. § Servi
9. et § penult. C. de latin. libert. l. ult. C. de emancipationibus et
novell. 81 Cuj. lib. 9. observ. Cap. 13. Oteald. lib. 2. Iment. Donell.
Cap. 19. lit. B et tamen quanquam solemnia haec supra intervenient
nihilominus tamen ad solam extrinsecam denominationem ducunt
negotii vero substantiam a suo naturali fonte non extrahunt, dictae ma-
numissiones 4. Rursus haec eadem assumptio urgentius probari in
conventionibus publicis id est in conventionibus principum, circa bellum
pacem et inducias quas nos treguas appellamus [illegible] quae conven-
tiones necessaria ratione naturales sunt non civiles Quiritanae l. conventionum §.
in principio § ult. ff de pact: quia si civilis conventio esset nec principes nec po-
pulos paciscentes obligaret, cum ius civile in l. extra territorium ff de
jurisdict. Mendoza 2. de pact. Cap. 9. n. 8, et tamen quanquam
predicta conventio naturalis sit, nihilominus tamen ex ritibus et ceri-
moniis singulorum populorum civilia supra et solemnitates utriusque
populi intervenire solebant Revard. lib. 2. Variar. Cap. 1. quem ad literam
Mendoz. ubi supra n. 11 et lib. 1 Cap. 7 n. ult., huc spectant sag-
mina, id est verbenarum solemnis eradicatio [illegible] ex quocunque
loco [illegible] ex verbenis, quae in moenibus romanis nascebantur, huc etiam
spectat illa fecialium porcae vulneratio, et alia solemnibus verbis in-
triata quae ex Livio lib. 1 ab Urbe condita, et Tranquilo in Claudio Cap. 25
secuntur Revard. et Mendoz. ubi primo [illegible] vero sine rite et so-
lemnitates non possunt praedictas publicas conventiones a iure gentium extrahere
d. l. conventionum § ff de pact. quod ordinarie magnopere admiratur, nos
id ipsum circa stipulationem [illegible] affirmare [illegible] Omnino
[illegible] necessitas verborum sit civilis, ad excludendos alios modos
[illegible] significativos, quales sunt nutus, nuntius, epistola.

Vborum Oblig.

tandem hac capite n.° 16.

ptio opinioni ob eam quoniam Verborum substantia in sono potius et dictionibus posita in sui significatione ad aliam rem, sive relata Verba eius naturalia signa instrumentalia sunt, quae voluntatem et sensus essentialiter repraesentant, l. labeo 7. ff. de supellect. leg. Philosoph. lib. 2. priorum analeticorum, et lib. 1.° perihermenias cap. 3. Divus Augustin. lib. 17. de civitate Dei cap. 14. Basil. ad genes. cap. 11. Daniel. adamant. lib. lib. 14. cap. 36 in fin. adeo ut superstitiosi, et omnino iniuriosi sit alia Verbis et formulis intentionis potestatem tribuere praeter illa, quae ab interno sensu emanantes, ad quam primario tanquam instrumentalia signa referuntur, sicuti contra opinionem Paracelsi et Platonis disputat Delrius magicarum disquisitionum lib. 1.° cap. 4. q. 3. Petrus Gregor. lib. 19 sintagm. cap. 8. Cum vero si Verborum substantia in pp. sonis tantum, et pp. interioris mentis significatio introductae haberi, et saveri rerum totius sensus internus et intentio, et voluntatis potissimum principaliter est, quia in oratione et Verbis intenditur: itaque ut Verba ultimam principaliter menti inserviant d. l. labeo 7. ff. de supellectili leg. Cum tamen ex uno capite sensus et voluntas, originem sua naturalia sint, et in civilia principia obligandi l. 1. § 2 ff. de pactis, l. in omnibus 53 ff. de O. et A. atque ex alio capite interrogatio et responsio quae sensus perficit, sint etiam originis suae juris gentium, fateri omnino oportet ipsa Verba subservientia huic etiam tamen necessaria (ex solemnia ut more aduersarii Cum Forcatulo geramus) nequaquam penitus predictis omnibus a suo nativo fonte jurisgentium extrahere quinimo ad denominationem tantum extrinsecam deducunt, ita ut pp. Verba obligatio Verborum in juribus et rubrica nostra appellatur: tandem si interrogaveris Cur inter hos modos internos sensus exprimendi qualiter nutu, nuntio, et epistola, jus civile Verba ad stipulationis solemnitatem eligerit? Responsio in promptu est: nimirum Cum Juncto, qui ex interrogatione et responsione constat, omnibus junctionibus conversationibus et stantibus, excellentior sit ut patet ex Paulo et Divo Isidoro locis sup. alegatis, Ignorans etiam suis sinceriorem modum eligere quo sensus et voluntas explicari solent inter omnes autem modos Verba sinceriora sunt et jurisgentium magis accedunt

f.

quandoquidem

quandoquidem primario et signa instrumentalia Voluntatis d. l. Labeo ff. de supell. legata l. indubij ff. de reb. dub. Bonius in tract. de ordine graduum magistratuum § 2. n. 92 in 10 Volum. Doctor. Anton. Bonius de imagin. Deorum circa Mercurij imagine =

17

Considerationes ad hoc ut sit juris gentium stipulatio =

Unica super stipulationis nostrae nobilissima circunstantia quae ex l. civili positiva stipulationem inducta esse minime persuadet, alia necessitas Hominum degens in numeris quod. diximus, illa est individua actus stimulatio, ut enim stipulatio actus stimulus, q. per improportionata temporis et negotij extranei intervalla corrumpitur l. 1 § 2. l. continuus 137. ff. hoc tit. l. 6 § 1 le. l. si ex duobus 12 ff. de duobus reis; de qua actus stimulatione varia st. DD. placita, alij affirmant esse naturalem ut Forcatel. dial. 72 Alciatus de presump. Cap. 29. alij autem civilem esse affirmant, et sufficiant tamen hanc ad stipulationis formam requiri Vti Vbalterius lib. 2 miscellan. Cap. 2. reprehensus ab Vbald. lib. 14. [illegible] Donel. Cap. 36. lib. P. et a Johan. Sedeo de Stipul. Cap. 1. [illegible] 2. Utcunque autem res hec se habeat apud allegatos auctores, nos censemus stipulationis individuam stimulationem civilem esse et naturalem non credidimus hanc autem aliam circunstantiam, seu hunc a fonte juris gentium extrahere posse, sicut neque Hominum necessitas degens sup. tractavimus quin imo expleandi sensus, ex qua, ex civili Hominum necessitate inductum individuam erat actus stimulationem tanquam deliberatae Voluntati subservientem pariter inductum; Experientia enim magistra est. fortiori intentione, et magis Offirmato Animo nos ea peragere quae non nisi perfecta dimittimus, quae eaque imperfecta et incoata non [illegible] mittimus Uti D. Cavalistas recte docet Del. suas disquisitiones magi. lib. 1° Cap. 4. Cum ergo lex civilis naturalem hunc Iure Undequaque perficere conetur, duo ei ornamenta indidit, quae deliberationem Voluntatis exprimerent, scilicet Verba et stimulationem =

18.

Responderetur ponunt aduersarij ab aduersarijs dicta = Hec st. quae prima [illegible]

Considerari poss. aduersarij autem multa objiciunt inquirentes absolute melior dicti cautionis fructus stinebitur. Objiciunt inprimis Juriscons. maniput... sit enim in l. eaque 93 ff. de acquir. rer. dom. l. si quis ita 127 § Chrisog.

sonus actu superest ff. pocu. l. penult. ff. de solut. l. ex diverso 17. § 1 ff. solut. m. l. ex hoc § ff. de just. et jur. Tit in § de statuto de inst. de actionibus. Ex 1° textu ita argumentantur, cum inter civilem et naturalem acquisitionem velit Modestinus differentiam constituere civilis acquisitionis exemplum inrebus per stipulationem quaesitis constituit; et inrebus quas filius et servus Domino et Patri per stipulationem acquirunt, naturalis vero acquisitionis exemplum in acquisitione possessionis constituit, quae naturalis est l. 1. ff. de acquir. poss. quemadmodum poss. et eius acquisitio ex jure gentium tantum descendit, ita stipulatio et ex qua per stipulationem acquiruntur, ex jure tantum civili proveniunt. Ex secundo autem textu ita argumentantur, ponit Paulus mutuum recte intervenire, quod cuntionali stipulatione ... Ceterum stipulatio inutilis evasit quia eius obligatio erat collata in extranea ... liberum, quod inutilem facit stipulationem l. stipulatio § 8 § alteri ff. hoc tit. § alteri inst. de inutilibus. In hac specie inquit Paulus quod inutili existente civili obligatione ex stipulatu adhuc tamen naturalis obligatio superest ex mutuo, ex quo adversarii inferunt obligationem ex mutuo naturalem esse, ex eo quod mutuum ... sit juris gentium, obligationem vero ex stipulatu civilem tantum esse utpote ex jure civili ortam. Ex tertio autem textu ita argumentantur, ponit ibi Pomponius naturalis et civilis liberationis exemplum, naturalis autem exemplum pecuniae solutae numeratione, solutam 48 ff. de solution. l. 4. l. depactis, civilis autem + liberationis exemplum acceptilationem, quae nihil aliud est quam stipulatio liberatoria l. 1. et l. an inutilis § in primo et § ult. ff. de accept., ex quo inferunt stipulationem liberatoriam et obligatoriam ... et distractum esse juris civilis, mutuum autem et numerationem solutae pecuniae ... distractum esse juris gentium. Ex 4° autem textu ita argumentantur, mulier per stipulationem ad dotem + constitutam obligata tuetur per exceptionem doli mali adversus civilem obligationem ex stipulatu, ut in ea ... taxat quaenam quod ... facere potest, ... matrimonii et societatis reverentia l. ... 20 ... ff. ... jud. ex quo inferunt

[Margin: 1. argumentum; 2. argum.; 3. argum.; 4. argum.; liberationis; constitutam]

obligationem

obligationes naturales. ex stipulatione est tamen civilis: alioquin si obligatio tamen naturalis esset non excluderet per doli exceptionem, quae tota fundatur in equitate naturali l. 1. et 2 ff. de doli mali except., quippe equitas naturalis cum obligatione naturali non pugnaret cum civiliaque pugnare bene potest. Standum ex textu in . §. de restitutio instit. de action. ita argumentantur. Antonius ibi Tribonianus differentias inter pacta de restitutio et inter stipulationem, docet quae in eo differre quod in stipulatione obligatio inest civilis, quod in restituto sola naturalis, tanquam obligationes et duntiones, ex diversis fontibus juris, scilicet

6. gentium et civili orientes = denique ex textu in d. l. 5. ff. de just. et jure ita argumentantur. recensentur ibi duntiones naturales inter quas stipulationem ponitur. quinimo asserit omnes obligationes esse juris gentium praeter paucas quas jus civile induxit, quod inter paucas ab eo jure creatas stipulatio censendae. praeter hanc juris classem aliae et iis inducunt de stipulationibus, fideiussionibus, et novationibus, quas servi, captivi et deportati celebrare non possunt. ad textum instit. in persona 30 §. ult. ff. de pactis l. post quam 9. ff. ut legatorum. nota l. quoties 14 §. ult. ff. de novationibus Servius 19 cum l. seq. ff. de fideiussor. Caeterum quia et rationum et jurium classes diversae sunt, ideo et nos a prima incipientes diverso ordine procedemus =

19 Respondetur 1. argumento

Explicatur textus in l. quae 53 ff. de acquir. rer. dom. = Et quidem quantum ad 1. difficultatem attinet ex textu in d. l. 53 ff. de acquir. rer. dom. respondemus cum Forcatulo et Mendoza Pomponium ibi nequaquam tractare de natura obligationum et an persequatur civiliter aut naturaliter acquiratur; sed tamen tractare de ipsamet acquisitione ex quacumque causa resultante, in qua acquisitio plurimum refert an sola potestate juris civilis, an juris gentium potestate peragatur, quia si solum juris civilis potestas acquisitionis peragit, principiis naturalibus acquirendi non indiget, atque idcirco parentibus et dominis invitis filius et servus per stipulationem, emptionem et donationem acquirunt l. et ignorant 32 ff. de acquir. rer. dom. l. servus 62 ff. h. ... Utrique dominantes, volentesque acquirentis et dantis, principes est naturale principium acquirendi §. per traditionem 42. instit. de rer. divis. junctis l. 1. et 2. cum seqq. ff. de acquir. rer. dom. cum autem ea quae filius et servus

...

seu) acquisitione, emptione, et donatione acquirunt invitis eis dominis patribus, quae acquirant, l. placet 79 ff. de acquir. her. Cum vulgat. necesse est affirmare tanquam acquisitionem solius iuris civilis potestate independenter a principijs naturalibus procedere aliquaz invitis dominis patribus qui nihil acquirit propter defectum voluntatis, arg. eius inl. beneficium C. de iureg. iur. Quod autem hec acquisitio a iure civili non peragatur virtute so- lius stipulationis evincimus a Forcatulo et Mendoza probatur quippe idem contingit in empt. et donat. quae iurigentium ab adversarijs dicuntur; et tamen quod servus filiusve emit aut eis donatur, Patribus Dominisque invitis acquiritur d. l. eius 82. f. hec acquisitio de qua Pomponius tractat hi fundatur innatura obligationis Civilis aut naturalis, sed solum in potestate quam ius civile presentare, in acqui- sitione ex quocunque titulo resultante, que potestas non solum in specie stipulationis, emptionis, et donationis elucet, sed in innumeris fere acquisitionibus quibus denique in acquisit. hereditatis dominiis absque naturali vero hereditariarum apprehens. acquiratur l. cum heredes 22 ff. de acquir. poss. civile prorsus naturale quod dominio- rum acquisit. ex iure gentium a naturali vero differentur. Caius initio l. 1. ff. de acquir. rer. domin. l. 1. ff. de acquir. poss. Tertius quod res donatae

ditatio Venditae ecclesijs, hospitalibus et civitatibus ita transe. dominij acqui- rantur sine traditione, ut petendi dari dicitur vel vindicatio et actio personalis, civile tamen est, ut ut inter 23 in principio et §. ult. C. de sacrosanct. Ecclesijs iunct. l. 3. ff. de oblig. et action. Donell. § Menter. q. 2. Cuj. l. 22. obseru. q. 28 Tiraquell. in l. 8 C. de revoc. donat. gl. donatione largitur n.° 319, et si quid noviter quis instructius ostendit Mendoza lib. 3. de pact. q. 2. n. 12 alliterlatque inquit Modestin. in acquisitionibus que iurigen- tium potestate peraguntur, quod si rigorem intendas, seriatim utrumque voluntas decurrat oportet ut dum ex exemplo possessionis a iure tot alarum, nec sufficit ut mihi per liberam personam possit acqui- rere, quod procurator potest apprehendat nisi et ego meo nomine a pretendam, id est velit mihi possess. acquirere l. 1. §. per procuratorem 20

f.

l. generaliter

... per eas. ... ff. de acquir. poss. ... per quas personas ... personam ... ad acquir. rer. dom. ... ff. de donat. ... ff. de acquir. poss. ... libera persona ... voluntas ... volentibus ... nobis poss. acquiritur. Cuius ... ratio est quia principes ... acquirendi ex jure gentium ... voluntas ... adversarii ...

Respondeo secundo juris ... 1278 Christ. ... responderemus ... Obligatio ex mutuo sit etiam civilis ... si adversarii responderint civilis ... juris civilis et naturalis principium negare; si enim actio civilis ex mutuo datur l. ... ff. de rebus cred. ... necesse est obligationem ipsam ex mutuo ... civilem etiam esse. Si vero responderint ... praedictam obligationem esse etiam civilem, ... obligatio ex mutuo civilis est, et ... a Paulo naturalis appellatur, ... quod civilis et naturalis a Paulo obligatio appellatur ... obligationis, aut naturalem ... aut civilem tantum esse; ... jus naturale gentium ... jus civile ... naturali magis ... quamobrem ... respondeamus ... jus civile ... obligatione ex mutuo, ex deposito, ex commodato ad lineam civilis obligationis ... obligationis, quae in eis ... naturalia ... obligandi, ... traditio ... naturales praedictorum contractuum obligationes ... Ceterum jus civile ... in eo quod obligationes naturales solo consensu ... emptione ... locatione et stipulatione, ad lineam civilis obligationis per ... transferat; quia tamen ... nobilissima naturalia ...

obligandi

Respondeo secundo

Argum. ... 1278. Christophorus ...

obligandi interveniant sic sensus et voluntas, per naturalem interrogationem et responsionem expressa, nihilominus tamen haec obligandi potestas non tam robusta est quam res et traditio ut verse patet. quo circa obligatio ex mutuo, deposito et commodato, et similibus tamen si a jure civili foveantur, adhuc tamen bene naturales appellantur, quia in eis non tam jus civile quam naturale elucet; caeterum in emptione, societate, mandato, et stipulatione, tametsi juris gentium magna pars interveniant, eorum tamen obligatio civilis bene appellatur, quia jus civile multum in eis elucet. quandoquidem illa naturalia pro adoptavit, quae in comparatione mercaturae et decoris, usque adeo nobilia mihi. ex tamen sequens et ut magno opere admirari videbeamus Paulum in praesenti obligationem ex mutuo appellare naturalem, obligationem autem ex stipulatione appellare civilem: quae appellatio non ex eo nascitur quod obligatio ex mutuo in se non sit naturalis et civilis sicut etiam obligatio ex stipulatione civilis et naturalis est. Ut in [illegible] Aldericus veteris glosatoris et Oldraldus, Accursius et Bartolus, concludunt in l. 1. ff. de pact. Mendoza in eod. tract. lib. 1. q. 11 versic. quod potius ex eo quod in mutuo magis elucet jus gentium, in stipulatione jus civile = 2 1

Respondetur tertio argumento

Ad tertium deinde argumentum deductum ex l. ult. et explicat penult. ff. de solution. respondemus et a primo per instantiam, in qua. l. tex. in l. penult. ff. scire jubat utrum solutio pecuniae numeratio liberet etiam civiliter de solution. = rucne? Deinde scire jubat utrum acceptillatio liberet etiam naturaliter quaene? et plane in numeratione civiliter etiam liberandi vim habere indubitatum est, l. solutum 48 ff. de solution. l. creditori 19 C. de pact. aliquin si liberatio etiam civilis in numeratione non inerit, obligatio civilis ex mutuo post numerationem maneret indigeret alio civili dissolutionis modo quod in auditum est. Rursus acceptillationem naturalem et liberandi modum plus quam manifestum est: quia si pactum simplex liberatorium non solemne vim habet naturaliter liberandi, adeo ut obligationem naturalem ex quocumque contractu perimat l. juris gentium 7. § si in pacto 4. l. ad emptionem 98 ff. de pact. l. 9. et 9. ff. de rescind. vendit. l. stichum 95. naturalis ff. de solutionibus. l. naturalis 10 ff. de oblig. et act., a fortiori pactum etiam solemne

f

et delineavi, primus qualis e acceptilatio, Cujus naturalis liberandi habebit e tamen si tacitu sit aut expresse l. cum emptor. §. ff. de rescind. vendit. l. 1 ff. de acceptil. Et tamen liberatio per numerationem contingens a Iudeo appellari tantum naturalis, Cum revera sit etiam Civilis, Et vice versa liberatio per acceptilationem contingens, ab eodem Pomponio appellari tantum Civilis, Cum revera sit etiam naturalis, quia harum appellationum extrinsecarum ratio a causis tantum Civilibus, et tantum naturalibus sumenda non est. Sed potius in concursu utriusque juris civilis et naturalis sumenda est ex prevalentia alterutrius: ita ut ubi valet jus naturale liberatio ipsa naturalis appelletur etiam si jus civile concurrat. Ubi autem prevalet jus civile liberatio civilis appelletur, etiam si jus naturale concurrat. arg. ex ind. §. Chrisogonus dicto superius. Ubi supra quia ipsa innumeratione et acceptilatione, principijs naturalibus et civilibus comparatis contingit. Utique solutio per numerationem naturalissima est d. l. soluta 49 ff. de solutionibus l. 1 §. Et de pacti, non solum quia naturalis est verum etiam quia creditoris mutuantis naturale votum in hoc tendit, ut id ipsum quod sibi permutum abest, realiter recendat, l. Cum q. 3 ff. de reb. cred. l. Ubi autem § 2 ff. hoc titulo ibi inde quoque non tam quam naturalis e liberatio per acceptilationem, quia Creditoris naturale votum non exequo in id pergen- det ut debitorem suum per pactum liberet; quia ex sui principiorum dono liberatio est plane naturalia omnia pacti liberatorij solemnis aut non solemnis naturalia ff. l. Cum verum et voluntas, interrogatio et responsio, Sed vel tamen non ff. vigeat adeo robusta ut comparari primus debeant Cum reali numeratione, et voto creditoris; quia jus naturale magis in numeratione elucet quam civile, et e contra, jus civile magis in acceptillatione elucet quam naturale, per quam causa restissima constat liber. Pomponij appellatio quia liberationem ex numeratione resultan- tem appellat naturalem etiamsi sit Civilis, et liberationem ex acceptillatione resultantem appellat civilem tamen si naturalis sit =

22

Respondetur 4. argumento

Ad 4.m autem argumentum ex circumstantiis ex. in deductis ex textu in l. ex diverso 17 § 1 ff. solut. matrim. respondemus ex illo nequaquam deduci contrarium textus: quippe ex ll. ea certa e

l. ex diverso 17. 1.° ff. solut. matrim. =

scilicet

scilicet inter diuges accipere exactam conuentiam, aut ff. presens, aut ff. fenitus matrimonium l. si ita neque 20 in tribus legg. ff. dere iud. l. diuortio 29 ff. de negotijs gest.. cui conuenientia obruit ut quandiu mulier per solemnes dotis promissione naaliter & ciuiliter obligetur, nihil ominus tn sin obstante nat. li hac mulieris obligat. ingentior naalis cto emergat que naalis mulieris obligationem deleat; mulierem naaliter quidem ntamen ciuiliter liberari.
q° ratio naalis potioribus iuris principijs potest obligationem naalem, separat... tollere l. si Unus 27 § pactus ff. de pactis l. Stichus 95 § naturalis ff. de solution., obligationem vero ciuilem ex pote ... non tollit ... exceptas mulieris juncta conuentia presenti aut presenti matrimonio ... hoc .... inde... ne ... Velazquez ... a seque... ad decorem presentis aut preteriti matrimonij ... naalis ... obligationem naturalem ex ... dotis ... obligationem vero ciuilem ex ... ciuilis obligationem opposita ... exceptione ... eandem ... ac si ... ciuilis ... ita Fortunius in l. ... ibidem ... Barbos. in l. ... iudicantes ... ff. soluto matrimonio q. 3. ... Respondetur 3° argum.
... Tribonianus ... obligationem ex ... ciuile quidem non ee, id est ... ex legitimis ... ... Respondetur 6° argum.
... § ff. de just. et jur.: cui respondemus obseruando Hermogenianum ibi ... aliquas ee Actiones a jure ciuili introductas, § ... circumscripsit ... aliquas ee obligationes a jure ciuili inductas ... Vti bene cum Fortunio & Berengario Fernandez ... notauit Mendoza lib. 3 de pact. cap. 1° n° 28 ... Censemus

G

Statio ...

Conventiones perficitur ex iure gentium l. 7. ff. de pact. obligationes autem aliquas sint conventiones ex iure civili. Ut patet in dictione dotis et iniuram. liberti, et in pollicitat. de qua Sap. ... 1° ... quod superaddendum est alias obligationes civiles, quae ex imperfectione conventionibus oriuntur, veluti obligationes per stipulationem metu et dolo extractae l. 1. et tot. ff. de doli except. l. ... ff. ... deinde obligatio ex literarum obligatione orta, ingeniose si conventiones quasi qualis forma interveniat, quod in ... ... per machinationem et dolum deficiat, ideo civilis et ... obligatio existimatur, quae sit per exceptionem doli mali atque per exceptionem non numeratae pecuniae eliduntur, l. 2. et 2. ff. de doli mali except. l. penult. C. de non numerat. § Uoic. inst. de literar. obligationibus =

2° Proponuntur alii textus ab adversariis oppositi quoties l. 4. § ult. ff. de novation. et resp. onde ... l. ... ff. de novation =

Praeterea adversarii graviter argumentantur ex tex. in l. postquam § ff. ut legator. nomine et l. 17. et 20. ff. de fideiussor. et l. in personam 30. § ult. ff. de pact. et 1° ex ita inferunt, nulla ratione civis romanus qui in illa specie ... ... naliter promiserat et pure novaverat, non obligatur neque ex 1° neque ex 2° titulo, nisi quia eo tempore quo prioris stipulationi ... ... de portatus et peregrinus invenitur, deportati autem et peregrini, ex obligationibus et conventionibus pure civilibus non obligantur, licet in ex obligationibus iuris gentium obligentur l. ff. qui 17. § ult. ff. de poenis l. deportatum 15. ff. de interd. et releg. l. si mandavero 22. § ... ff. mandat. ... ideo deportatus ibi non obligatur, neque ex 1° ... neque ex secunda pura stipulat. quia stipulatio iuris civilis conventio non iuris gentium =

2° argum. et opponitur ex tex. in l. postquam § ff. ut leg. nomine caveat.

Deinde eodem argumendi genere utuntur ad text. in l. postquam § ff. ut legator. nomine. quo loci ideo fideiussores qui pro herede ... ditionaliter obligato fideiusserant non tenentur, quod eo tempore quo legati ... extitit heres ... captivus ... ex ... obligo ex ... et ex stipulatione non potuisset in captivo ... civili, ideo fideiussoris ... quia deficiente principali, accessoria cadere necesse est. l. 2. de fideiussor. ... vulgatus; cuius textus difficultas ex Cujacii observat. augetur lib. 19. observationum cap. 9. et 28 q. ... Pavin.

adversarii ...

ad eundem tam, q. in illa, specie principali obligo [illegible] dictiona liber rata [illegible] erat tantum testamentaria, aut erat simul ex stipulatu. Utraque autem civilis tantum est & ideo in captivum cadere non poterat. de testamentaria, res nobis indubia est, cum ei cau[sa] sit civili jure [illegible], l. cum ttt. 122 ff. de reg. jur. Valenz. cum remotione ad tit. de acquir. her. c. 1 n. 3. de stipulat. autem ab effectu ipso probari; quia si aniquigentium fuit, et captivus & peregrinus ita obligare ut fidejussor accedere potuisset [illegible] inter habentes II ff. de [illegible] peccun. l. 9. & [illegible] & tempor. [illegible] junctal. deportatus l. 5. ff. de minerd. [illegible] = Deinde urgentur [illegible] Javolenus in l. 20 ff. de fidejussor. quo loci cum p adversariis decisiones extare videntur, si servus extra causam peculiarem & dominicam, adeo ex fidejussione non obstante, ut neque naturaliter eum obligetur. q. ibidem patet: quia si vel eum naturaliter obligaret, soluta pecuniae repetitio non daretur [illegible] juriggen: tius 7. in princ. & l. si pupilla 4. ff. de pactis l. naturaliter 13 l. ergo 51 ff. de sedict. indeb. l. naturales 10 ff. de oblig. & act. quia autem servus in illa specie extra causam peculiarem & dominicam fidejuberet, nec naturaliter eum obligetur ex nullo alio capite oriri potuit nisi quia fidejussio stipulatio est l. 5. §. satis 2. ff. hoc tit. l. si hereditate 32 de [illegible] interrogatus ff. mandati, Donell. lib. 15. comment. cap. 49. et ibi Osualdus lit. C. [illegible] de fidejuss. cap. 11 n. 1 & 2. cum autem stipulatio [illegible], sit civilis inter eos [illegible] servitute, caderem [illegible] ea de assumptio fortius ibidem probatur, quia in predicta specie nec mandator [illegible] quo servus fideicit obligat ex mandato post efficacem solutionem a servo & domino [illegible] tenetur: quandoquidem [illegible] mandati a mandatore pecuniam [illegible], habet ipso tamen creditore tanquam civiliter, & naturaliter repetitionem [illegible] tio nec ut credamus neque mandaret de fidejussi, neque fidejussionem ipso aliquam interesse pluries obligationem. aliquam actio mandati adversus mandatore debitorem saltem post efficacem solutionem daretur l. inter 26 §. [illegible] ff. mandati §. si quid 7. inst. de fidejuss. Donell. 12. comment. cap. 13. [illegible] de arbitran. cap. 41. Gomez

3. argum. e con plic. [illegible] in l. 20 ff. de fidejussor.

G

lib. 2.

Gratis [illegible]

lib. 2. Varior. Cap. 17. n.º 10 Cuius rei ratio illa est videtur, quia fideiussio [illegible] per stipulationem necessario celebrata servum contra sui peculium et dominum obligare non potuit: alioquin si aut causa fuisset peculiaris, aut contrahens ipse fuisset iurisgentium servum naturaliter obligaret. [illegible] 308. [illegible] ff. de pact. l. naturaliter 13 ff. de cond. indeb. l. servum 19 ff. de fideiussor. [illegible] 198 [illegible] ff. de [illegible] [illegible] lib. 3. [illegible] ind. l. 198 [illegible] et a Fabro in [illegible] ad [illegible] in d. l. quod servus 96. [illegible] 118 ff. de [illegible]

24.

Utique principia [illegible] in hoc [illegible] ad maio[rem] intelligentiam [illegible] doctrinae [illegible] ad intelligentiam [illegible] [illegible] de novatione

Denique horum iuris inductiones suspectas habuit noster Ramos del Manzano [illegible] cum Valentia Cujacio et [illegible] existimamus [illegible] delecti iudicii ad d. l. 5. ff. ut leg. nomine legitime ff. [illegible] iuris [illegible] nisi [illegible] nostris principiis [illegible] occurramus, quia [illegible] dilucide sequens [illegible] in hoc articulo notandum est, scilicet stipulationem solemnem a pacto nudo in eo tantum differre quod [illegible] verbum interrogandi et respondendi [illegible] tanquam instrumentis necessariis necessitate legitima ad exprimendum naturalem sensum: sive inter interrogandum et respondendum [illegible] velint ita trahere ut [illegible] interrogantis et respondentis assumant tanquam instrumentum necessarium necessitate legitima ad exprimendum sensum stipulationis faciunt formalem, [illegible] magistratu in l. iurisgentium 7. §. [illegible] 12 ff. de pact. at vero si [illegible] subeat interrogandi et respondendi formas (nec [illegible] verborum apice mutato) velint [illegible] tanquam instrumentis necessariis necessitate legitima, sed tanquam instrumentis voluntariis libertate naturali ad sensum exprimendum, efficient procul dubio pactum nudum d. l. iurisgentium §. quare 12 ff. de pact. et [illegible] Fab. [illegible] lib. 1. miscellan. cap. 11. Joachimus Operius lib. 2 parerg. pag. 34. qua circa in eod. §. 12 si [illegible] non obstante [inter]rogandi et respondendi formas, atque non obstante [illegible] [illegible] sub illa forma noluisse stipulari sed tantum pacisci voluisse indubitanter tota illa forma [illegible] naturalis [illegible] [illegible]

[illegible]

firmatis. Usquadeo, ut ere nihil pactus a stipulatione distat: nec mirum, quoniam est quod principia Obligationis naturalis et civilis, nisi sunt omnec connexitate legitimae sunt signa necessaria verba assumantur: et tunc necessaria obligationis velut obligationum instrumentum operabuntur. Cum enim secundum jus gentium interrogatio et responsio celebrari libere potuisset, aut per verba, aut per nutus, aut per epistolas, si verba assumantur ut libera, tametsi perfectam formam interrogandi et respondendi intercedat, pactum efficiet, sicuti ut necessaria efficient stipulationem. Quae doctrina summo opere notanda est quoniam rite percepta nostra sententia inexpugnabiliter probatur. 25.

Deinde observandum est quod si deportatus, peregrinus, captivus, et servus faciant conventiones sub forma stipulationis, videlicet: spondes? spondeo. Velint quod dictis verbis uti tanquam instrumentis necessariis necessitate legitima, ad exprimendum consensum eorum stipulationem, nequaquam facere, quinimmo nihil agere, nullamque obligationem naturalem, aut civilem inde resultare: de obligatione civili patet ex quo civitatem et legum commercium non habent, non possunt se subjicere legibus et solemnitatibus civilibus, tanquam civilibus uti, quae extra commercium legum. l. qui attinet. 33. ff. de reg. jur. l. nullo 7. ff. ad l. Cornel. de falsis de facto autem evidenter probatur; quia qui valet stipulari, non valet tantum paciscia, et ideo neque tanquam ex stipulatu civiliter, neque tanquam ex pacto naturaliter obligatur, l. 1. § legis 4. ff. de edititue. l. 1. § 2. Veto ... ff. hoc tit. l. an inutilis 8. in princ. Veto nisi in hoc quoque ff. de acceptil. junct. Donelli interpret. l. 4. comment. cap. 36. Eneas Robertus lib. 1. recepter. cap. 33. quod si deportatus, peregrinus, captivus, et servus verbis stipulationum utantur tanquam signis necessariis et legitimis, ad exprimendum consensum, neque stipulationem, neque pactum efficient. Caeterum si eadem conventionis verbali forma observata, velint quod dictis per illis verbis uti, tanquam instrumentis voluntariis libertate naturali, efficient procul dubio pactum, et naturaliter tantum obligabuntur, arg. text. ind. ff. juris gentium 7. § quod fere 9. ff. de pact. junct. l. deportatus 15. ff. de interdict. et releg. cum enim stipulatio a pacto nudo in eo

tantum

tantum differat, quod verba tanquam necessaria aut tanquam libera signa aspi=
ramenti, necesse est fateri pro dictas personas in 1° casu neque civiliter
neque naturaliter obligari; in 2° autem casu naturaliter obligari
omnino.

26.

Respondetur dicto textui in l. quoties 14 § fin. ff. de novation.

Ex his principijs respondemus 1° ad textum in d. l. quoties 14. § ult. ff. de novation. ibi enim civis Romanus dum adhuc civitate et legum benefitio fueretur ita conditionaliter stipulatus promisit, ut voluntate verbi interrogandi et respondendi verbi tanquam instrumentis necessarijs necessitate legitima ad exprimendum verum: cum autem ante conditionis implementum ad peregrinitatem devenerit, incidit tandem casu ad extremum inutile a quo stipulatio incipere non potuisset; quippe quae admodum post deportationem non potuisset verbis stipulationis uti, tanquam instrumentis necessarijs ad contrahendum, quia hec necessitas civilis est: ita similiter si casu devenit ante conditionem ad eum statum a quo non inciperet, nulla in eius persona radicatur oblig. nec civilis nec naturalis. non civilis quia peregrinus est. stipulari quae voluit, non naturalis quia pacisci noluit: itaque ad stipulationem deficit potestas ad naturam autem defuit voluntas (cum per textum ind. l. 1° § 9. ff. de verb. obl. et l. 1° § 3 ff. hoc tit. Curtij Juguni est, neque primam obligationem conditionalem, in eversis deportati transiti, neque secundam obligationem novantem, quia non est persona ut inquit textus que obliget, obligatio autem novari absque obligatione novanda subsistere non potest l. 1° § 1°. cum l. seq. l. si Stichum § 1°. ff. de novat. Donell. 16. comment. c. 20 Brisson. lib. 2. de solution. c. de novation. Gedeus de mitend. stip. c. 5. vel sic 6. n° 40. Barbos. in l. si cum dotem 22 § solut. matrim. n.° 8. Ex quo apparet in predicta specie non ex eo obligationem deficere, quia substantialia principia obligandi in verbis stipulationis sint civilia, quinimo ex eo personalis obligatio deportati in eius persona non subsistit, quia naturalia etiam principia obligandi defecerunt, id est verum, non enim voluit pacisci sed stipulari. Unde si ab initio ita conditionaliter, subeadem formam contrahens convenisset, ut verbis uteretur tanquam libero instrumento voluntatis, non improbabile naturalem obligationem absque aliquo tamen civili effectu subsistere adeo ut neque novatio teneret nec fideiussor accedere potuisset argu.

arg. tex. in l. 47 ff. de fideius. iunct. l. similiter 16. § ult. ad Vell.
quo tota ff. ad Velleian. negare nos lanet Cujac. lib. 37 q. Papini. in
d. l. fideiussori. Alb. 25 q. in l. postquam. § impetrio ff. ut legator. noie Alb. 15.
observation. Cap. 9 Cui subscribit noster Ramus, tanta est opinione ut existiment
obligationem etiam pura et multo magis conditionalem per deportationem primus extin-
gui. arg. tex. in l. 2. et 7. §. ult. ff. de cap. minut. ibidem l. fidebitor.
47 ff. de fideiussor. quo loco Papinian. docet adeo tota obligatio
civilis et naturalis per deportationem extinguitur, ut fideiussor pro deportato ac-
cipi non posse. Ceterum Minor existimamus longe securius et firmare
civilem quidem obligationem ante deportationem radicatam prius extingui naturalem
autem manere sine illo tamen effectu civili quasi tota obligatio extincta
ut loquitur Ulp. ... tex. in d. l. 7. § ult. ff. de cap. minut. quia scilicet
deportatus nudus et pauper exulat, ... obligationes
extincta ... ut loquitur Justinian. nec fideiussor accipi
potest, arg. tex. in d. l. similiter 16. § ult. ... ad Velleian. et ibi Cujac.
... exceptione 20 ff. de adit. ... diversa et contraria
est ... tex. in l. ult. ff. de ... reis ... fideiussor non accepto
... sola ... incivitate manente. atidcirco bene
Cujac. ibi proxim. ... illud aliquis emendat reponit quasi alterius
... diversa et contraria 11 tex. in l. habemus 11 ff. de ... peculio.
et tex. in l. 4 ff. de diver. et tempor. praescrip. et tex. in l. ... servitut.
25 ff. de ... servor. Utique nec juris ... de peregrino ... de captivo ...
... diversa ... debimus in solut. tex. in d. l. 9.
ff. ut legator. noie.

explicantur tex. in l. Papin. in l. ex ea 121 § in insula ff. hoc tit. et l. inter 26 § ult. ff. de pact. dotal.

27. Antequam hinc discedamus nos subsistere cogit
Papin. in l. ex ea 121 § in insula ff. hoc tit. et l. inter 26 § ult.
ff. de pact. dotal. ... stipulatio conditionalis ... de-
portatus ... si conditio post deportationem existat ... non praecedente
... videtur ... docere ... quod sicuti ... per stipulationem ... moriar ... pen
deportationem, peregrinus efficiar ... firmat stipulationem ...
... tamen ... adhuc deportatus moriar: ... non obscure

docet.

105

docet obligos ad similitudinem imperii deportati morientis radicari: ut etiam mortis viz tributi xa stoicorum et jurisprudentum discipline in l. 1. ff. de editione. infine l. 3 duos 18 ff. de manum. test. Gellius lib. 6. Noctis atticarum Dieus August. lib. 13 de civit. Dei. c. 9 Cuj. in l. 1. ff. de edition. infine et ubi in fine. ... ab hac difficultate ... expediunt Cuj. ...
Silanius, Suarez cum alijs scholasticis, quos ... ponderat ... Fresia Chumaceo ... c. 10 n. 7. et Cuj. Petro Barbos. in l. ...
Stante 22 §. 1. ff. solut. m. n. 8. Papiniani mens ... ut ...
debit indeportato viuente aut moriente obligos. ... radicari, hocq absurdum foret, quinimo id duntaxat ... deportato moriente obligatio actiua et passiua incipiat in fisco ... tamen sit heres successor in lucrorum et onerum deportati ex l. 1. inter 91 §. 1. ff. de fideiussor. l. inter 2. 6. § 1. ff. de pact. dotal. l. ex pacto 17. § ex facto 5. ff. ad Treb. l. statim fiscus 488 ff. de Jur. fisci. Plane obligatio ... radicari in deportato, ... lucrorum et onerum incipiat in fisco, ... Vera et ... activa obligatio ... Bartolus disputat Salicetus in l. 7. C. de ... Vera ... de obligat. passiuas. ... l. inter § 1. ff. de pact. dot. ... 1218 in insula ff. ... cum proxime adjuncta ... que indubitanter loquuntur ut ... = ...
respondimus ad ... in l. quotiens 14. § 1. ff. de nouat. ... jendum et explicandum ... obligatio principalis ... speciei neque incipiat neque radicet in ... deportati ... exhibide docet ... eadem specie ... radicari in fisco ... jure ordinario ex ... stipulationis a deportato ... libratum jure extraordin. et singulari ... contemplatione bonorum ... fiscus heres quidem ... successor tantum ... l. ... ff. de ...
nec quidquam obsecuris ... in hoc dicendi ... necesse est ... cunda etiam stipulatione nouantem in illa specie ... Vlpian. negat. Cui difficultati Cuj. Salizeto ... proxime respondemus 1. quidem ... obligos ... fisci jure singulari ... 2. ... in ... Ratio ... obliq. principalis, quae ...

Pr. ... ultima ratio decidendi ... quotiens 14 §. 1. ff. de nouat.

Pr. ... ratio dubitandi et ejus responsio

adeamus acceptatis [illegible] si in civitate maneret, illa esset fuisset [illegible] ex [illegible] directa, quae ad [illegible] [illegible] nascatur, [illegible] aut iniqua [illegible], aut in [illegible], aut tandem [illegible] herede [illegible] l. nouatio 24 ff. de novationibus [illegible] in l. 3. 11. ff. de fideius. [illegible] autem [illegible] heres [illegible] [illegible] bonorum successor, qui [illegible] [illegible], ideo principalis illa oblig. directa nunquam nata fuit, neque in deportato [illegible] [illegible], neque in fisco qui heres [illegible].. atque [illegible] alia [illegible] oblig. [illegible] ex [illegible] [illegible] [illegible] iure singulari [illegible] [illegible] [illegible] nunquam [illegible] per subsequentem novationem, [illegible] obligationem novam [illegible] directa [illegible], quam solam [illegible] curabant. d. l. novatio 24 ita [illegible]. et Bart. [illegible] [illegible] in l. [illegible] 32 [illegible] ff. de pact. n. 4.

Excedo dicendum quod. [illegible] solutio [illegible] [illegible] quidem [illegible] quodam iure [illegible] solutio [illegible] in l. [illegible] 5. ff. [illegible] [illegible] civilis [illegible] obliq. illa [illegible] fidei [illegible], quia [illegible] [illegible] si in civitate maneret, [illegible] civilis fuisset, [illegible] [illegible] naturali [illegible] [illegible] [illegible] [illegible] 9 et [illegible] 24. [illegible] in d. l. [illegible], nimirum [illegible] testamentaria obligatio [illegible] [illegible] naturalis, quae [illegible] [illegible] [illegible] [illegible] [illegible] civilis [illegible] absque aliquo [illegible] originali l. [illegible] 120 ff. de [illegible] [illegible] ad [illegible] [illegible] in l. 3 ff. [illegible] Theophilus in § 2 inst. de [illegible] naturali [illegible] in l. [illegible] ff. [illegible] [illegible] [illegible] [illegible] 6 n. 7. [illegible] [illegible] quia [illegible] voluntates in [illegible] naturalis [illegible] [illegible] l. [illegible] 7 ff. [illegible] plane [illegible] obligationis [illegible] [illegible] novari aut [illegible], [illegible] [illegible] obligatio naturali [illegible], [illegible] sine [illegible], [illegible] [illegible] civilis [illegible] manet [illegible] in [illegible] principali obligatio [illegible] fidei [illegible] [illegible] [illegible], neque per [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] obligationem [illegible] civilis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

Margin: C S; 28.; [illegible] solutio [illegible] [illegible] § ff. [illegible] [illegible] [illegible]

Tractatus X.

subsistere tametsi dictio existat [illegible] Papinianus, q neque ius neque [illegible] adaugetur [illegible] stimulatione fideiussoris [illegible] in [illegible] tabel [illegible] agendi [illegible] in Captivo obligatio civilis [illegible] testamentaria [illegible] [illegible] dictio ne [illegible] legatorum et fidei [illegible] dictio nec [illegible] retro [illegible], l. legata ff. de [illegible] demonstrat. =

29.

[illegible] solutioni objectiones int. habemus in ff. de [illegible] [illegible] l. 4 ff. [illegible] temporal. [illegible] l. [illegible] 25 ff. [illegible] [illegible] [illegible] captivi [illegible] [illegible]. civilis recte [illegible] l. habemus 11; atque [illegible] obligationem [illegible] fideiussor. [illegible] huic difficultati [illegible] [illegible] animadvertas [illegible] [illegible] circa illas obligat. [illegible] [illegible], quae [illegible] ante captivitatem [illegible] [illegible] aliud vero circa illas obligationes dictionalis [illegible] [illegible] principium post captivitatem [illegible], [illegible] primarum obligationum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] jura captivorum [illegible] [illegible] l. lex Cornelia 28 ff. de [illegible] l. [illegible] 12 ff. de captivis et postlimin. reversis, at vero obligat. tempore captivitatis incipientes [illegible] nullius [illegible], q. [illegible] hereditas captivi incerta [illegible] l. [illegible] ff. [illegible] [illegible] [illegible] [illegible] n°6. [illegible] [illegible] [illegible] obligationum [illegible] ideo [illegible] [illegible], [illegible] in [illegible] [illegible] [illegible] obligat. [illegible] l. 4 [illegible] [illegible] solutione [illegible] in l. [illegible] 25. [illegible] videndus est [illegible] lib. 3 [illegible] [illegible] lib. 2 [illegible] 16.) [illegible] [illegible] obligat. captivi [illegible]

a. p̄dicta solutione [illegible] [illegible] in l. habemus 11 ff. de [illegible] [illegible] l. 4 [illegible] [illegible] l. [illegible] 25 ff. de [illegible] [illegible] respondet.

habemus l. 11 ff. de act. peccun. Cuj. 15 obser. Cap. 9. et 25. resp. Pap. in d. l. positque §. Janitolaria, Vbi pr. n. 6.

30.

Celsi etiam inferri scio [illegible] ad exaz in l. §. si 20 ff. de fideius. et l. inperii 30 §. et [illegible] ff. de pact. qq ponderemus multifaria respondere: primus Cuj. Obser. lib. 12. Domini Donell. Cap. 22 lit. A. Jonr. Gom. lib. 2. Resolut. Cap. 1. n. 8. Gifanius ad l. naaliter 14 ff. de condict. indeb. Theophil. Ins. §. [illegible] [illegible] qq modo aliter Oblig. q. eis existimant servos cum extra Caz peculiaris fideiubentes et nouantes naaliter Obligari, hanc tamen naalem Obligationem, absque ullo civili effectu manere; sicuti supra de obligationi naali additionali Civium Romanorum dicebamus, quae addictio, post desertationem extitit. Cuj. autem Vedoaces [illegible] nouationes illas ex effectu civili, ut quamuis ipsa naaliter tantum obliget, Veterum tamen Obligationem, Civilem et naalem perimat, l. 1. in fin. ff. de nou. hic effectus Civilis cengatiue naali servorum obligationi, quam ex stipulat. nouante efficere poterat, l. inperii 30 §. ult. ff. de pact. §. praeterea Veteris idem juris init. quod tollitur Obl. deinde naalis Obligatis ille eius effectus est ut soluti repetitionem impediat. l. 7. in prin et §. 4. ff. de pact. l. 19 ff. de condict. indeb. l. naalis 10 ff. de obl. et act. l. si fideiussor 16. §. naalis ff. de fideius. quo insuper effectu naalis haec Oblig. spoliata est siex causa nouationis, aut fideiussionis servus persoluat, d. l. §. si 20 ff. de fideius. quod ideo introductum est ne cum fraude Domini extra peculiarem causam detentionem eius addictionem fortius faciat; seu potius et Dominus arbitrari lib. 16. Comment. Cap. 20 q. nouare et fideiubere officia [illegible] civilia, quandoquidem in eis exacta personarum fides desideratur. Denique Gouean ad l. 13. §. 16. ff. ad Falcid. [illegible] l. si filius §. 8. si filius §. in seq. ff. de pecul. itaque in juribus praenarrata adducens naalis Obligatio servi per stipulationem permittentibus aut denegatis solis illi Obligationis effectus omnibus Civilis denegatis, arg. Text. in l. similiter 16. §. ult. ff. ad Velleian. a qua illa Obligationes jus Civile [illegible] extinxit qua impedire sicuti de deposito docet Papin.

Alias dicitur facta [illegible] nouat. omnis [illegible] [illegible] 20 ff. de fideiusso. l. inperii 30 §. ult. ff. de pact.

l. si nouationi 91.

Tractatus &c.

in l. si decedens 27. ff. de fideiussor. Ex quo etiam si affirmes depositi obligationem extinctam penitus esse, vel quasi extinctam; verumtamen hic omnibus ratione dictarum legum & auctoritatibus per praemissis, videlicet in praesenti ius servat extra casus peculiares innovantes & fideiubentes q. emere Obligationis tanquam instrumentum necessarium denique necessitate legitima, in extinctione ex dictione iuris appareat. Inquantum seruit quod servi extra commercium leges & ubi post solemnitatibus civilibus vel extra casus peculiares & dominicas. l. si mer. 19. ff. de aedil. edict. l. vlt. in fin. cum eo. l. si non ... l. 1. ff. de peccul. l. quod servus 96. eod. l. ex duobus 12. l. ff. ex duobus reis: & ideo neque naturaliter neque civiliter obligantur, quia ad civilem obligationem deficit potestas, ad naturalem autem deficit voluntas, quia per texti. in l. 1. § 4. ff. de oblig. et act. l. 3. ff. hoc titulo.

31.

Contra Aquilianam. Quia adversarij interpretationes Aquilianae ... Inepta stipulatio. ... quid quaeritur ... ponderatur ... Utilitas difficilis.

principalis mea assertionis Utiliter argumentaretur adversarij ex ratione Aquilianae ..., nisi quis dicat ... ad ... ex ... ut ... possit ... & ... Duones Collinos, unde & unico ... l. 4. & 5. ff. de transaction. l. ff. de acceptil. ... Cujac. lib. 5. observ. cap. 6. Rebuffi. in l. 32. ff. de reg. iur. ... lib. 2. de solution. cap. de acceptil. ... sic est quod ... Aquilianae ... naturalibus, civilibus, sive ... restituta potest omni ... ad ... exonerans ... modo sine ... modo ... & ... modo ex ... ut iniurias, ... obligationis ... Aquiliana, atque acceptilatio Aquiliana interveniat ... ad ... necessitate ... & ... ratione & fundamentum ... acceptilationis Aquilianae, ... naturalis, ... civilis & consequenter ... Aquiliano tam obligatoria, quam liberatoria ...

juris civilis renovandae, ... naturalis ... ex iure ... accepti ... Aquiliana =.

... universa difficultas ... Liberatio naturalis ... ex pacto ... efficax omnino est ad dissolvendam obligationem naturalem ... mutui ... 27 §. pacto ... Aquiliana ... ad dissolvendam obligationem naturalem et civilem ... mutui ... naturalis ... ad dissolvendam ... quaecumque causa ... naturalis mutui, et cum liberatione pacti ... quandoquidem ... ex pacto ... Aquiliana ... ex iure gentium est ... obligatio ex mutuo, quae liberatio ex pacto, l. juris gentium 7. et §. 4. l. ... 27. § ... de pactis; ... naturalis ... Aquiliana sit ... actio realis mutui, tum sit liberatio, quae ex acceptilatione resultat sit naturalis et civilis, erit perinde efficax ad tollendam ipso jure sine adminiculo stipulationis Aquilianae naturalem et civilem obligationem ex mutuo resultantem, siquidem tam in actu mutui quam in distracta acceptilatione directa ... principia naturalia et civilia obligandi, quam principia naturalia et civilia liberandi, ... se habet naturalis liberatio ex pacto, ad naturalem obligationem ex mutuo, ita se habet naturalis

... praeter minor ... accedente ...

et civilis

et civilis liberatio ex acceptilatione ad naturales et civiles obligationes ex- mutuo, ut cum causae obligandi et liberandi differentes quidem in ipsis autem obligationibus et liberationibus omnino conformes ... illud fit, sicut ... ea ... dissolvitur quo colligatum est. l. nihil 35 ff. de reg. juris l. ... 35 § naturalis ff. de solution.

33

Argumentum ... inexpugnabile argumentum. Rursus hec eadem assumpta ... nimirum pactum liberatorium injuriarum legitimatum ... exemptum a lege ... potens est ad dissolvendum ipso jure ... exceptionis, civiles et naturales obligationes ... ex delicto ... verum etiam re et facto ... acceptilatio directa a jure legitimata, potens est ad tollendam ipso jure obligationem ex quocumque ... relati ... exemptio probatur in hoc pacto liberatorio a lege 12 tabul. legitimatum ... nisi cum eo pacit talio esto l. ... 17 § 2 l. si unus 27 § 2 ... pactum ff. de pact. l. non solum 11 § 1 ff. de injuriis § ... instit. de injuriis, eadem extractio pacti liberatorii in causa furti atque in causa emptionis et venditionis ... l. ab empt. 58 ff. de pact. l. ... ff. de ... vend. l. ... ff. de decept. l. cuius 170 ... cap. 17 et ... Paul. ad ... l. 17 § 1 ... solemni ad ... in l. legitima 6 ff. de pact. (Donel. 15 comment. c. 24 Ant. Gomez lib. 3 Variar. cap. 6 n. 11

Cuius ratio illa est quoniam prima ac lex pactum liberatorium legitimavit obligationes naturales et civiles ... in eodem ... conveniunt cum naturali et civili liberatione ... causae obligandi et liberandi sint ... discrepantes, quod causa ... et injuria facta est, ... pacti ... non ... acceptilatio directa obligationes ex quocumque ... interimat ... necessarium recurrere ad speciale stipulationem acceptilationis Aquilianae.

34

Cum vero ... de hoc argumento ad hanc rubricam superiore quinquennio ageremus facile demonstravimus ... auctores

dicto arbitri quandoquidem ex illo r. et pugnantia [illegible] modo est
ut respondeant Ulpiano in l. an inutilis 8 §. ult. ff. de accepil.
a [illegible] acceptilatio directa est juris gentium in
[illegible] quod omnes [illegible] juris gentium virtute stipulationis
Aquilianae ad [illegible] civilem obligationem reducit, §. est autem prodita
3 instit. quib. mod. tollitur obl. l. 1a [illegible] vulgarem intellectum ff. de
acceptilat. cum ejus inventio Aquilij casu ut obligationes omnes
naturales virtute reductionis efficiantur civiles, ideo stipulatio
Aquilian. ratione exercitii in materia juris gentium appellabitur.
ita Cuj. in l. 2 ff. de just. et jur. et l. 1a §. ult. ff. hoc tit.
quem sequuntur recentiores, caeterum cum ijdem animadverterint hanc
reductionem virtute Aquilianae superfluam vere esse, quoniam accep-
tilatio directa semel legitimata et suis viribus relicta etiam
omnino fuit absque reductione ad tollendas ipso jure omnes
obligationes naturales ut probarem ire [illegible] hoc [illegible] cira-
[illegible] est omnino civile. [illegible] dicendi [illegible]
innumeras terminorum implicationes [illegible], nunc
autem breviter respondemus acceptilationem quae directa juris
gentium distincta est [illegible] clamat l. 4. [illegible] l. 8 §. ult. ff.
de accepil. [illegible] suis naturalibus viribus relicta potentem
esse ad extinguendas ipso jure omnes obligationes naturales et
civiles [illegible], [illegible], [illegible]. Caeterum tametsi
tanta vis et potestas [illegible] civiliter acceptilationi
directe inhaereat, ut [illegible] pacto perfectissimo, et delibera-
tissimo, [illegible] in jus civile [illegible]
sermonem manum injecit, atque [illegible] civile quam acceptila-
tionis virtutem [illegible], et [illegible]
virtutem [illegible] obligationes
extinguendi [illegible]
[illegible], quae [illegible] tom. 2 [illegible]
[illegible] quib. mod. [illegible]
[illegible] ex illo [illegible].

H.

Tractatus [illegible]

nulla necessitas naturalis aut civilis id efficit ut acceptilatio sola
utramque obligationem tolleret [illegible] dicta convenientia et proportionis ratio id evincunt
pariter, quod consentaneum (etenim hoc tibi consentaneum [illegible]) videbatur ut
conventus et distractus etiam in causis obligandi et liberandi consentaneus in ob-
ligationibus et liberationibus [illegible] l. nihil 35 ff. de reg. jur. quod obiter
tamen si acceptilatio quaelibet utraque liberationis naturali et civili bene conformaret
quae obligat naturali et civili quorumcumque [illegible] contractu aut consensu
contractu [illegible], quod [illegible] in causis [illegible] quandoquidem ipsae
causae erant reales, contractus autem causae erant [illegible] tales ideo Aquilius
ut omnimoda [illegible] in causis quae in [illegible] proportione induceret
Aquilianam stipulationem excogitavit, cuius natura [illegible] obligatio [illegible]
tales et [illegible] pariter liberatio [illegible] talis efficeret in qua analogia
proportionis substantia stipulationis [illegible] quae admodum
enim rerum naturalium substantia non mutetur tametsi artifex eam ad effectum
artificiales [illegible] ita similiter substantia stipulationis assumpta est ab
Aquilio ad effectum artificialem civilem, sine mutatione [illegible] substantiae
[illegible] imminutae eius virtute naturali. ex qua [illegible] limitationem
effectum tandem, ut acceptilatio aliorum naturalium [illegible] specialiter
legitimos recenseatur l. actus 77. ff. de reg. jur. l. 2 et 5. ff. de acceptil.
quippe quamvis in sua substantia sit naturalis ratione tamen accidentalis
mutationis civilis legitimus actus appellabitur quod adversarijs [illegible]
aut [illegible] in alijs juris [illegible] [illegible]
[illegible] illegitime appellant. l. 5 [illegible] ff. de [illegible]

tandem
[illegible] tractationis [illegible] explicandum [illegible]
[illegible] l. 35 [illegible] de [illegible] in quo acceptilationis natura [illegible]
cedenti explicata insigniter [illegible] ibi stimulationem
per stipulationem (id est per acceptilationem) [illegible], quod nimirum
omnimodam [illegible] ab Aquilio excogitata tantum causis obli-
gandi et liberandi quae in istis obligationibus et liberationibus inter-
venit [illegible] Paulus [illegible] exemplum pacti
[illegible] liberationem [illegible]

[illegible]

obligationis ipso jure ñ tollit et in equalibus viribus congrediuntur sig dem in utroque eadem equitas naturalis versatur l. stichum g. 5 § naturalis ff. de solut. q. adamodum naturalis ñ elidit naturalem ipso jure sed tantum recoñciliatione auxilio ita similiter nec acceptilatio ipso jure elidit stipulationem
s. huic argum. rectissime respondent interpretes affirmando, in primo quidem pacto liberatorio solum naturalis equitatis versari de=truncti effectus quasdam civiles pretorie exceptionis et superaciij. Ex pacto enim liberatorio licet ñ nascatur ipso jure liberatio q. vim civilis ñ habet relevat tamen exceptio l. jurisgentium 7. in vulgo et § si simulla 4. et § ait Pretor. 7. ff. de pact. q. effectus tempore civilis aut civili proximus ipso jure ter possessiis, fatus etiam ñ potuit secus autem in stipulat. et acceptilatione ing. tan naturalis quam civilis potestas equaliter imperatur atque ideirco equaliter colliduntur. ita Cujacius ibidem et lib. 3 Paul. ad Quin. Azon. in sum. C. de pact. Gomez lib. 2. Varior. cap. 26. Brenard. lib. 2. Varior. c. 3. Fachin. lib. 10 controvers. cap. 95. Donel. 16. comentarior. = cap. 7. et ibi Osuald. litera B=

His finitis finiuit nostra tractatio auctore D.D. D. Josepho nuñez De Zamora = sue vespertine chathedre me=ritissimo stipendiario et colle=gii decanno huius alme Universi=tatis Salmantine, ad honorem et gloriam Dn. nri Jesuchristi ipsius que Virginis Marie matris sue.

Anno Dni. 1657. pridie idus Martij scripta a.

= soli Deo, laus et honor. =

[illegible]

modiu re

Cum sequens inventu in testamentis legatis fideicommissis et mortis causa donationibus ... ambulatoriae ... voluntates usque ad ultimum ... l. 4 ... l. 3. § fin. ... l. equenti et ... adimendis ... 3. § ... donationibus inter ... et licet ... mutationem ... nomen ... nominatus, ... tamen nomen ... Iuniens ... nomen quo ab aliis diceretur ... ... Beremb. ... ... lib. 30 ... decade 77 ... lib. 2 ... n.° 10 et alij ...

Pro chorographia exponendus difficilis ... in l. ... iurand. 13. §. si fideiussori 7. ff. de acceptill. quo loci ascrit ... obligatus ... acceptilatione ... difficilimus ... ea que nuper exposuimus ... si attendamus eius ... ... inutilis ... §. ... cod. ... acceptilati fieri ... nisi ... Collinatur ... eximit ... maioris ... mater, que docet, nihil ... quae ... obligationes ... in hoc ... acceptilatio ne, que verbalis ... ... obligationes ... ... nisi realis ... iure ... obligatione ... fideiussore ... obligato ... ... §. l. ... 16. ff. de acceptill. l. 2. ff. de duobus reis ... principali liberatur ... §. l.° ff de liberat. legat. ... fideiussor ... principalis ... consequentia ... acceptilatio ... notamque Bart. et Bald. ... §. si fideiussori ... iuris ... lib. 8. select. ... 2 ...

Josephi callus

Rub.ª Tituli qq. modis re(c)hitur oblig:- atio ex lib. 3. institu- tiõ(num) ttis. co- mentaria.

auctore D. D. P. Joseph. acallo anno Domini 1653 XIIII Kal. nobembris

n° 1°

Proemiu(m)

Postqua(m) totu(m) de obligationib(us) ingre(di)tractatu(m) ex eadem mi(hi) n(ost)re p(ro)vincie superioribus anno absoluimus et mater(iam) eius et inst. ex(positionem) ordis ut munere mihi iniuncto p(rae)sente etia(m) absolb(amus) tractatu(m): etenim impera(t)or in § Ult.º ante titu(li) post praecipua(m) obligatio(nu)m divisio(n)e(m) sub dividens concludat obligationes que ex contra(ctu) proveniunt q.d. et species que quas ... Verborum ordo ... frequentate ... in l. quo ... 34 ff. de V(erborum) ... et in l. g. solvendo 60 ff. de here(dibus) ... instituendis et in l. sig. 24 ff. ag. et ag. ...) sati im- plet prius de obligationib(us) que re ... et tegendis ... obligatis ex contra(ctu) ... species oblig.(ati)onis ex re ... ve(n)ientis

n° 2

P. Antequam ad ... huius tit.(uli) explanatione(m) expositio(ne)(m) accedamus ... supponenda i ... obligatione ex quasi ... necessaria ... ea obligationem ... fundata ... specie ... q. aliae obligatio ex re ... inmediate proveniens videlicet ex ipso negotij gestione, alia de qua in praesenti que non ex re ipsa inmediate ... ex ... habito ... alla nulla ... conventione neq. ... obligatae ... negotiu(m) gestu(m) e ... et ideo ... absens ... ignorans quis obligari l. solvendo 41 l. ... verbis 43. ff. de nego. gestis l. ex mandato 20 § ... l. si mandatero ... n. § ... ff. mandati ... tamen repugnare et ... ex ... ff. mandati qua(m) ... in l. fin. C. de negot. gest. quasi ... Meritt. et ...

Modis [illegible] obliga

n° 2. [illegible] ut in [illegible] [illegible], merito [illegible] D. Crediti [illegible] [illegible] referre ad [illegible]
[illegible] ut [illegible] de reb. cred. [illegible] C. si aduersus creditorem. [illegible] [illegible]. 4. l.
[illegible] 15. ff. de reb. cred. l. [illegible] 12 §. [illegible] 12 [illegible] §. [illegible]
ff. mandati [illegible] et minor. 24 §. restitutio. l. [illegible] 27. §. si pecuniam ff. de
minoribus [illegible] l. 3. §. [illegible] ff. ad [illegible] [illegible] Martial. lib.
12 [illegible] 25. ibi [illegible] notant Bart. in l. [illegible] n° 29. ff. de reb.
cred. [illegible] in [illegible] n° 1. [illegible] in
[illegible] ad [illegible] Paul. in [illegible] 27 n° 15. ff. eod. [illegible] lib. 7.
[illegible] n° 5. Flori. in [illegible] ad [illegible] de reb. cred. n° 8. [illegible]
n° 2. [illegible] [illegible] 20 [illegible] Pech. [illegible]
principium huius [illegible] n° 33. quae de causa creditor proprie dicendus est [illegible]
[illegible] [illegible] mutua pecunia [illegible] sicut debitor ab [illegible]
[illegible] accipit [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] respondet creditores [illegible]
[illegible] [illegible] [illegible] [illegible] nominandos l. creditores 11
ff. de V. S. [illegible] debendi credendi [illegible]. Verum [illegible] accepionem
[illegible] [illegible] [illegible] sequi [illegible] [illegible] [illegible]
[illegible] ad [illegible] l. 1 [illegible] de reb. cred. [illegible] in l. si
[illegible] ff. de V. [illegible] [illegible] declarat. 45. n° 3. et 6.

ad secundum.

[illegible] in dicta l. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ut
[illegible] ad [illegible] ff. de pactis in l. iuris gentium 7. et in [illegible]:
[illegible] [illegible] in d. l. [illegible] [illegible] [illegible]
[illegible] denominatione [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
ultro citroque [illegible] [illegible] in qua [illegible] [illegible]
[illegible] [illegible] [illegible] n° 3. [illegible] ibi [illegible]
donationis 7. C. [illegible] [illegible] in rub. [illegible] ff. de [illegible]
[illegible] in Rub. inst. de oblig. n° 25. et in [illegible] n° 2. [illegible]
[illegible] in miscellaneis [illegible] in d. l. [illegible] [illegible] [illegible]
[illegible] ultro citroque obligationes producere = [illegible] hac opinione omnibus [illegible]
aliis [illegible] [illegible] [illegible] [illegible] n° 4 cum sequentibus [illegible]
in l. ex hoc iure §. [illegible] in princip. [illegible] ff. de iust. et iur. [illegible]
[illegible] existimatione [illegible] Cornelii [illegible] [illegible] in d. l. [illegible]
[illegible] lib. [illegible] [illegible] Baroni ad [illegible] inst. de oblig. [illegible]
in prin. [illegible] n° 32. [illegible] lib. 3. Variar. [illegible] 2. [illegible] 1. et

O. titi [illegible]

impotenti ipse denominabantur [illegible] ex [illegible] sensu [illegible] difficultas [illegible]
in l. [illegible] ff. de [illegible] hendo emptione et [illegible] [illegible]
et venditio [illegible] iuris gentium [illegible] legitimo [illegible]
infert solo [illegible] obligationem [illegible] iuris gentium [illegible] sensu [illegible]
agit [illegible] degg. [illegible] agit [illegible] iam ingenerato
iuris gentium [illegible] [illegible]
iur. [illegible] eodem modo [illegible] emptio et venditio [illegible]
sensu [illegible] obligationes degg. impotenti [illegible]
[illegible]

Facile tamen ab his obiectionibus expediemur [illegible]
degg. impotenti servi denominationem [illegible] necesse [illegible] rei intervenire
[illegible] probabant [illegible] [illegible]
[illegible] immutuo et [illegible]
[illegible] ita [illegible] emptio [illegible] venditio [illegible] nullatenus dicere [illegible]
[illegible] ex [illegible] [illegible] degg. impotenti [illegible]
rei intervenit [illegible] accidentali
rei interveniente [illegible]
[illegible] in emptione rei intervenit [illegible]
[illegible] intervenit [illegible] vendita [illegible]
[illegible] vendere [illegible] [illegible]
[illegible] venditio [illegible]
[illegible] denominationem [illegible] animas [illegible]
[illegible] rei [illegible] vendendo rei tradendo [illegible]
[illegible] emptionis venditionis et ceterorum [illegible]
[illegible] intervenit [illegible]
[illegible] intervenientia [illegible] venditionis [illegible]
[illegible] emptionis [illegible] venditionis [illegible]
[illegible] obligationis [illegible] [illegible] sensu [illegible]
[illegible] obligatio [illegible] venditio obligatio ad rei [illegible]
tradendae [illegible] emptori obligatio [illegible] venditio [illegible]
[illegible] obligandi [illegible] facit ut [illegible]
[illegible] efficax [illegible] obligatio [illegible]
[illegible] nulla [illegible] sufficienter
ut est mutuum, depositum et ceteri degg. impotenti [illegible]
[illegible] obligatio nulla [illegible]
[illegible] traditio [illegible] necessaria [illegible] ut [illegible]

[illegible]

obiicies au[illegible]

n° 4.

2.

[illegible]

remoderare

Menoch. lib. 2. de arbitrar. q. 69. n. 27. Ivre Belass. in decoverijs Suinianorum. Cap. 5. Teuthl. select. disputationum volum. 2. disp. 29. tesi 3. lit. B. et tesi 28. tesi 3. lit. E. ex quo refert ut ex re proxime immediate proveniat obligatio, et quoslibet contractus alias obligationes in capaces obtinere l. furiosus 46. ff de oblig. et act. in qua intelligendus difficili et notus dicta in l. Naturales 25. ff de fideius. ut Bonirij emendationibus Amer. fab. lib. 8. Diecharaci 3. 905. et innoati ad dicta in l. interdum 29. ff de indeb. Rebard. lib. 20 Variar. Cap. 9. Pet. fab. in l. in negotijs 5. ff de reg. iuris et eandem Duaren. in l. iisque 6. ff de Ver. ob. existimantis in probant Marcelij obmitendum nullo modo sequendam. Eius dicta de obligatione immediate ex re proveniente, ex se exiguerent comm. dicta l. iis 9 6. n. 2. Vltra Hispanus in alterfolio et Donel. 16. necnon Cugo. in comm. ad eundem et in l. si hoc 29. ff de usucap. Pet. Gregor. lib. 24. syntagmatis. Cap. 3. n. 29. Trencon. cent. 1. assert. 34. Morl. in studijs ad tit. de Dominio, tenenda emptione n. 81. Iul. Pacius cent. 8. q. 27. et denique Scibilis Hunnius in notis ad Teuthl. V. 1. disp. 28. q. 12. et V. 2. disp. 28. q. 10. in n. O. B. Variar. resolut. tractatu 5. q. 21. et in Encicloped. iuris universi 3 part. tit. 1. Cap. 3. n. 55. de hac obligationis causa agimus et presenti alia obligationis species de qua tr. accipit sermo quae licet ex re dicatur, provenit tamen immediate ex dictus, de celebrati Originem quae cum ex dicta sine conventione teneat necessario ex postulat quarentiam Consensum nam ut dicebat Petrus in l. 1. § 3. Mentionis ff. de pactis adeo conventionis nomen generale est ut quae tam sine re sive verbis fiat nisi pactum habeat consensum nullum sit.

Obstat tamen proxime dicta sequens consideratio nam si obligationes ex quatuor tit. capitis quae ex dictu Originem ducunt, veris ex postulant quarentiam consensum, sequebatur ut si ex re. si ex consensu parte videlicet digniori obligationes dicerentur. Eo modo quo emptio, et venditio locatio et conductio et ceteri iuris gentium. Quoniam ex consensu dicuntur venire § 1. inst. de oblig. ex conven. = nec satis fit, si dicatur. In hac re in dicta tit. lege in presenti non necessario interveniens debet propter consensum a translatio ut nulla sine eo intelligatur emptio l. nec emptio ff. 1. et si § 1. si emptione 34. § 2. ff de aedilitio edicto et actione venditio et tamen nomen operari ex consensu oblig. dicitur l. consensu 2. in qua qq. 4 8. obligatio de

...iendus n.° 3 et Anton. de mesa lib.° 1 Varian. cap. 2 n.° 12 qui sent.
nullo modo esse admittendam cum nec firmum fundamentum habeat nec
iuris principijs conveniat et iuris certitudine per mutationes leviter tradi
pro lubitu obligari posse ut et Verna Paul. indicta l. 2 § item q.° n.°
ex placito permutationis, et quaestione permutandi, obligatio et actio
perdueit et ita tenuerunt Paul. Carbon. in dictis iuris gentium 7. n.° 6. & de
mili Ant. Gab. inroatti. ad d. dicto § item et D.r Rebel. lib.
... unde potissima horum D.° Thuzff. inter ut D. Thes. nominati de
... penitentia ... ita contradictione simul ... numero ... sol
... ex sententia traditione ... nec ... penitentia
poenitentiae locus l. sive §. quae res pign. ... d. l. 9 pignori ... § dupin.
... in ... lato l. 1 §. sicut ... mandati ... tantum ... rito ...
voluntarii et ita ... tamen necessitatis l. sicut §. ... obligati l.
... de obligat. et action. sola acceptatio de positis ... cap. ... nihil
reposituri interest. ... rei detentio tamen, nec possessio, nec ...
habuere ... thes. innominati, ... ex una parte tradita in alium
... fruimus ... irrevocabiles ... licet ... ei qui dedit
... et a ... poenitere ... resilire l. hypothecimus ...
de solutione cap. data l. 8 §. sin. ff. de rerum permut. l. gratia § C.
... ne sit deterioris conditionis ... ex parte ... complevit
... impleverint l. si in ... impleret ... poenitere ... ...
resilire ... si ex parte sua impleverit resilire poterit, docent Ant.
Com. lib. 1 Varian. cap. 3 n.° 7. Barm. lib. 2 resol. cap. 3 n.° 13.
Anton. de mes. lib. 1 Varian. cap. 4 n.° 17 cum sequentibus Donel. lib. 4
Comment. cap. 22. ubi ... l. ... in varat. ad ... transacti.
n.° 7. Paul. ... disp. ... disp. 22 ... Athens. in
commentarijs ad ... tit. ... de praescriptis verbis et plures
... D.r Bebel. lib. 2 opusculorum sect. 3 cap. 15 ...
et ... lib. ... ad ... cap. 7, et cum
... innominatus ... Ant. Gab. inroatti. ad d. ...
... lib. 2 miscellaneorum cap. 15. Mendoz. lib. 3
... cap. 3 Osuald. ad Donel. lib. 2 Comment. cap. 10 lit. A. ...
... cap. 27 n.° 16. inst. de actionib. ... in ...
... p. 3 q. 6. poenitentia admittitur accidit ... negotijs quae
... ut manifestum in ultimis voluntatibus quae tamen
... ut ... illo ... [illegible]
... possunt libere revocari ad nutum disponentis, ...

pro modi iure

[illegible] ex [illegible] sumit obligatio nullaq. ante eam [illegible] [illegible] [illegible] sufficit credendi voluntas, ut [illegible] Senec. lib. 10 de beneficiis cap. 21. ait q. voluit mihi pecuniam [illegible] [illegible] [illegible]. [illegible] Bald. non [illegible] de [illegible]. Et [illegible] videmus de celo caderent quas [illegible] [illegible] [illegible] [illegible] et alijs refert Bartol. in [illegible] [illegible] num. 4. C. de [illegible] et [illegible] eandem [illegible] 9. n.° 1° [illegible] Jason. et Casius in l. rogasti 11. § si tibi n.° 4 ff. de reb. cred. [illegible] aliquis cum mutuo dederit 10. [illegible] ut 11. redantur nisi [illegible] [illegible] [illegible] [illegible] § 1. [illegible] ut [illegible] in l. si tibi 17. ff. de pactis, re n. obligatio [illegible] nisi quatenus data sunt in l. [illegible] 9. C. de [illegible] num. [illegible]. notant [illegible] [illegible] [illegible] lib. [illegible] cap. 8. in fine [illegible] [illegible] in tractatu de [illegible] q. 10 n.° 25. [illegible] 73 n.° 1° [illegible] ad [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] 28. q. 11. et 12. et [illegible] [illegible] lib. 1. [illegible] cap. 4. n.° 3. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tamen sent. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ut forte [illegible] explicatur. Duaren. in [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] ad [illegible] in [illegible] 17 et [illegible] in additionibus et in l. rogasti 11. § si tibi [illegible] [illegible] n.° 50. [illegible] n.° 1. ff. de reb. cred. [illegible] in [illegible] de acquisitione per arrogationem n.° 35. [illegible] [illegible] 4. n.° 3.

n.° 5. [illegible] [illegible] [illegible] expensa [illegible] [illegible] in [illegible] § fin. ff. de [illegible] [illegible] empt. [illegible] [illegible] emptio et venditio [illegible] [illegible] gentium legitime [illegible] [illegible] [illegible] in mutuo, deposito, commodato, et [illegible] [illegible] [illegible] [illegible] iuris gentium ut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] omisso [illegible] [illegible] in [illegible] ad [illegible] de [illegible] emptione n.° 18, q. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] de empt. et vendit. n.° 5. [illegible] [illegible] [illegible] [illegible] [illegible] de [illegible] in commentarijs ad eundem [illegible] § 3. n.° 5. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ita legens, [illegible] emptio iuris gentium [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quam [illegible]

ad Principium huius tit. et illa verba re contrahit. oblig.

N.o 1

Satis superque [illegible]

[illegible] extat quare obligationes quae in initio tituli continentur [illegible] dicantur [illegible] specialiter agendum nobis est de mutui datione quae in ordine [illegible] [illegible] et [illegible] ad eius [illegible] applicandum debeamus [illegible] propositione illius [illegible] disputandum est, an mutuum sit proprie [illegible] cuius disputationis verissima est affirmativa sententia quam indubitabilem [illegible] [illegible] refert [illegible] obligationes [illegible] mutui datione [illegible] firmat [illegible] in [illegible] [illegible] [illegible] species exponit in obligationibus ex re [illegible] principalem locum tenere mutui dationem [illegible] mutuum [illegible] manifeste [illegible] etiam ex [illegible] in [illegible] [illegible] [illegible] cum dixisset ex [illegible] [illegible] duplice origine in eorum numerus mutui dationem refert, [illegible] [illegible] sententiam [illegible] in l. 1. in l. certi [illegible] et in l. [illegible] 27. de rebus cred. l. 1. ff. de oblig. [illegible] l. [illegible] inde 7. [illegible]

[illegible] interpretis [illegible] indiget [illegible] [illegible] in l. creditores [illegible] ubi [illegible] mutui [illegible] [illegible] mutuo [illegible] creditoris accipientis [illegible] mutui [illegible] ex l. [illegible] [illegible] sententia [illegible] definit, ultro citroque [illegible] in mutuo [illegible] datur, mutua recip[illegible] [illegible] partium obligatio [illegible] mutuum [illegible] [illegible] [illegible] commendatione partium oblig. [illegible] mutuum [illegible] sententia [illegible] [illegible] commendatione Alciat. in commentariis ad [illegible] [illegible] creditores [illegible] reponentis loco illius [illegible] sed particulariter respondendum est [illegible] sententiam [illegible] mutuam pecuniam. [illegible] excludere [illegible] dubitatio [illegible] An creditores [illegible] denominari [illegible] [illegible] quolibet [illegible] deberet [illegible] denominari creditores [illegible] mutuo pecuniam sit, [illegible] alterius speciei celebretur dubitationes [illegible] [illegible] creditum proprie [illegible] referatur [illegible] [illegible] aliena [illegible] [illegible] quae [illegible] creditis [illegible] l. 1. ff. de reb. cred. in mutuo tamen plenius aliena [illegible] sequimur [illegible] aliene [illegible] dominium plene in accipientem transferimus [illegible] [illegible] custodiam [illegible] alterius fidei credimus. [illegible] in deposito [illegible]

[illegible]

q mocir ne 5 hist. Bug

... ad dict. ... dubitat. ... de reb. cred. ... 2 ...

... Exposito traditionis dominii, & thui

necessarie principio illo quem in l. certi ... & finiss. de reb. cred. ... quod ... pecunia ... intercedit mutuum ... ut pecunia ... deponitaria ... mutuari ... Ad dubitationis ... quo ... pecunie ... dominii ... nisi ex traditione mutuari ... obligari ... mutuum ... videbatur ... traditionis ... ad ... & thui ... pfeci... alter respondit illo ... quoniam ... traditio secuta non est ... mutatarum pecunia ... tradita habeat l. vire ... ff. de ... constitutionem ... nova traditione sufficit ad dominium transferendum ... in ... ad acquirendi ... dominium ... interdum ... de verb. ... pecunia que penes se habebat ex deposito ... mutuum ... mutata depositi causa, & in mutuum versa ut notarunt ... mutuariis ... in l. ... ff. eod. ... deponens pecunia ... depositarium ... usi ... pecunia ... deg. ... ammissa ... estimatione Cinnari lib. 7 ... cap. 4 n. 4 ... respondendum alia ... & diversa ... simpliciter & absolute ... pecunia deposita ... permisit de ... simpliciter & absolute mutuum ... ind. l. ... si simpliciter ... depositarium permisit ... si depositarius ... depositarii ... pecunia ... in mutuum ... & ... depositi ... pecunia depositi ... mutuum ... ideoque depositi actio tenebitur l. si pecunia 34 ff. depositi ... verbum ... ind. l. ... Vbicunque ... ad ... de reb. cred. cap. 2 ... deinde ... lib. 3 ... cap. 16 ... n. 27 ... sponsaliorum 25 § 9 pecuniam n. 32 § 6, & 34 ff. depositi ... ad ... de reb. cred. n. 30 ... n. 80 & licet ... dicta ... ind. l. ... 24, ind. l. die 25 § 1 & in l. si ... 29 § ... ff. depositi ... intelligentia ... antiquiores in dictis iuris ... ind. § ... nia ... lib. 4 observat. cap. 10 ... lib. 1 ... cap. 7 ... selectarum disputationum ... disp. 16 ... 6 ... cap. 78 & disp. 26 ... disp. 3 cap. 15 & lib. 13 ... resolut. ... 3 part. 4 ... lib. 2 de ... cap. 4 n. 86 ... ind. l. ... 24 & ind. l. die 25 § 1 ... ad dicta iura, ... de deposito part. ... n. 21 ... ad ... 3 de reb. cred. ... n. 25 ...

Ad Rub.

[illegible] 4. 0. 1. et alterz quod [illegible] videre in [illegible] 3 [illegible]
[illegible] in d. l. [illegible] [illegible] 3 [illegible]
[illegible] obligationis ideo [illegible] [illegible]
[illegible] obligatus [illegible] de [illegible] nomine [illegible]
[illegible] maiori obligationis [illegible] [illegible]
[illegible] reciproca tamen [illegible] obligationis [illegible]
[illegible] significatione [illegible] simul trahere ut sic [illegible]
[illegible] obligatio [illegible] obligetur quoz interpretatio [illegible]
[illegible] lib. 1 [illegible] d. n. 3. [illegible] lib. 3. [illegible] n. 1. [illegible]
ad l. de [illegible] n. 3. Bach. declarat 3 [illegible] Tobias
[illegible] n. 7 [illegible] de oblig. [illegible] de decimis [illegible]
[illegible] sequenti [illegible] de oblig. n. 10. et ad [illegible]
[illegible] Vend. n. 8. [illegible]

n. 3.

99. Expositis [illegible] explicandi [illegible]
[illegible] que [illegible] denotant, [illegible] in Rubrica [illegible]
[illegible] ut [illegible] tradition [illegible]
[illegible] ut [illegible] mutuo [illegible] [illegible]
[illegible] nec [illegible] dicatur obligatus [illegible]
[illegible] dicitur mutuum [illegible] quod [illegible] dubitare in [illegible]
[illegible] pecunia 3. [illegible] cred. [illegible] Caius 99. [illegible] pecunia acceptura [illegible]
[illegible] Creditori promisit postmodum oblatam pecuniam quam [illegible] Caius [illegible]
[illegible] accipere mutuo [illegible] recusauit [illegible]
[illegible] de mutuo accipiendo [illegible] [illegible]
[illegible] Creditore [illegible] pecuniam [illegible] promittentes. [illegible]
[illegible] accipiendo [illegible] in [illegible] de
[illegible] de [illegible] [illegible]
[illegible] que [illegible] [illegible]
[illegible] de reg. iur. [illegible] [illegible]
[illegible] in potestate promissoris [illegible] accipiendo [illegible]
[illegible] accipiendo [illegible] [illegible]
[illegible] mutuo accipiet [illegible] tradition [illegible]
[illegible] promissio [illegible]
[illegible] acceperit [illegible]
[illegible] obligationis [illegible]
[illegible] Decius [illegible] Bonel. [illegible]
[illegible] in [illegible] de non num. pec. [illegible]

B

iumnis faciende ca. rez aut corpus loco pecunie aut pene eod. modo etiam quando fit singulariter per illa pecunie ... corporibus idem accidat ut etiam si pecunia Pomponius apud arbitrum depositam sit, ... omnium sententiam dicere l. Litigatores 11 §. q. ait per off. de recept. arbitr. q. firmum maneat, non ideo quod Paul. dixit in text. d. §. creditum mutuum non esse nisi accedat pecunia, excludendas esse res que in mensura consistunt, quia haec appellatione pecunie continentur, nec expendende est ea appellatio ad corpora absolute quia hoc mutui ratio non patitur ut statim dicemus.

Que autem sint res que in pondere numero aut mensura consistunt facile intelligemus etenim ille accipiuntur, non que numerari ponderari aut mensurari possunt ... quarum substantia frequentius in pondere aut mensura consistit quia ita communiter estimantur, ex pondere numero aut mensura, et ideo de his rebus quanti sint interrogati, non aliter respondere possimus, nisi ex certitudine ponderis, numeri aut mensure, videndus Cuia. lib. 11. obs. Herbat. c. 37. quare autem in his tantum rebus mutuum consistat, reddit rationem Paul. in l. 2. §. mutui do. ff. de reb. cred. quia harum rerum datione possumus in creditum ire, quia in suo genere functionem recipiunt, per solutionem que per speciem, quod illa Paulinum ... tibi iuris interpretibus difficillima acceptant ... expositione ... communiter repetentes ad tex. in d. § mutui do. Irsolendi ... ad ... in d. §. et lib. 1. singularium ... c. 1 expon. ... Alciat. ad eund. §. et lib. 2. paradoxorum c. 20 ... Coriot. Donel. et Ant. Fab. in d. §. mutui do, Belonius lib. 1. subcurationum c. 4. Duar. lib. 1. disp. c. 14 Giglius in repetitione ... in d. l. 2. ex n. 49. Fachin. lib. 2 contr. c. 49 Ioan. ... lib. 3 sent. c. 14 Bulteau disputationum scholasticarum c. 14 Othman. lib. 1. Variarum c. 2 ... Baihon. declamat. iuris c. 46. Titan. in suo ... Teuth. select. disp. ... disp. 20 ... Hunnius in notis ad ... disp. 18 q. 7 ... et lib. 3. Variarum resolut. tract. 3. pars 1. q. 3 et 4. Ant. Tom. lib. 1. Variar. c. 6. n. 2. ... ad Paul. in d. l. 2. ... in suo ... n. 17 q. n. 25. plurimos refert ad huius textus explanationem et ... in ... de reb. cred. n. 23. sensus ... in his rebus tantum consistere mutuum quia tales ... ut liceat ... dationem in creditum ... dominium ... tamen sicut creditor ... eiusdem generis, bonitatis et qualitatis ... que si idem res in individuo solverentur ... omnimodam harum rerum similitudinem in qualitate estimatione et bonitate, quia in aliis rebus nullomodo contingit ... a harum rerum datione in creditum ire transferret quia dominium damnum ... alterutri in solutione cum nulla sit tam similis et equalis estimationis ut eius solutione ... creditori satis fieret, ... ut esset creditor solvere invito creditori solvi prohibetur at in rebus ... aliud solvatur tamen quia ita simile est ... qualitatem bonitatem et estimationem ... in individuum idem solvi videatur nullomodo solutionem creditor ... recusare

ad Rubr. qq. modis re

ad Supra d. c. 60. in sequentib. = Sequitur explicanda illa v. ba mutui autem

[illegible]

Alitur quandoque accipitur pecuniae v. bo in tota sua latitudine ut patet in tit. de Calumniatoribus in quo prohibetur qui pecuniam calumniae causa accipere quo v. bo e illa [illegible] comprehenditur qui corpora accepit l. 1 in princ. et in § fin. ff. de calum. ideoque pecuniae v. bum in illo edicto in tota latitudine accipitur

lum[illegible]

[illegible] qui [illegible] remanet ex confes. Paul. in l. a [illegible] de rerum permutatione ubi [illegible] ei inter [illegible] emptionis et venditionis et inter innominatum permutationis [illegible] ait [illegible] nudo [illegible] permutatione [illegible] traditione [illegible] obligationi [illegible] traditione [illegible] nullam [illegible] nudo consensu obligatio [illegible] solo [illegible] [illegible] [illegible] recepta est inter [illegible] nomen habeant, hoc est [illegible] argumento [illegible] in [illegible] nomen [illegible] speciale habent [illegible] Paulus [illegible] ad [illegible] permutationis [illegible] innominati [illegible] traditionis [illegible] incipit [illegible] obligatio [illegible] sequens [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible]

N°
7.

[illegible] Paulus [illegible] speciale [illegible] habent [illegible] nomen habent [illegible] [illegible] [illegible] traditionis [illegible] [illegible] [illegible] ante traditionem [illegible] [illegible] [illegible] nominati [illegible] [illegible] [illegible] Donel. lib. 12 [illegible] [illegible] [illegible] speciale nomen [illegible] [illegible] substantiam habere debent [illegible] in l. 11 [illegible] [illegible] lib. 2 [illegible] n° 2 [illegible] innominati [illegible] traditione [illegible] [illegible] permutatio vero seu innominatus [illegible] traditione [illegible] permutationis [illegible] in l. ex placito [illegible] C. de rerum permutatione [illegible] in summa [illegible] n° 2 et in [illegible] n° 1 [illegible]

uncie. uluz in his rebz [illegible] q[uo]d una species pallura soluta eadz omnino species redi[illegible] ... ideo ut ecce tenetz nummos argenteos in mutuo titulo dedi, et si tenus eas summae [illegible] ... qualitatis, Aestimationis et Valoris solvat licet gene[re] ali [illegible] tamen credi[tori] videtur, et aliquando magis satisfit creditori per illa tiōe aliarum specierum, eius dez qualitatis [illegible] et Bonitatis quaz si ipse species accepta[s] re[d]deret, ut ecce [illegible] frumentum in mutuo titulo dedi [illegible] tempore [illegible] ita ut similitudine specierum redas, et sine [illegible] satis fit eadz specie reddita, ac si in genere reddas, [illegible] eiusdez qualitatis et bonitatis sine dubio creditori satisfit dez ea [illegible] reddito acceperat, [illegible] functioz [illegible] eō satisfactio [illegible] eiusdez qualitatis et Bonitatis quaz eadem specie reddita [illegible]

7.

[illegible] dicendum [illegible] quasi Usufructu [illegible] in his rebz [illegible] numero aut mensura [illegible], earu[m] [illegible] dominiu[m], quin quasi Usufructu[ari]o transeat d. §. si Vini 7. [illegible] eadem [illegible] institut. [illegible] tamen a [illegible] diversaz eorum [illegible] quasi Usufructu[illegible] necesse est derestituenda [illegible] motas aut [illegible] d. l. si Vini 7. d. [illegible] l. 2. [illegible] S. C. S. § [illegible] de Usufructu earum rerum [illegible] de Usufructu [illegible] Usufructuarius [illegible] l. [illegible] scire debet. 7 ... in [illegible] notae [illegible] institutionem [illegible] in mutuo [illegible] necesse. 2 dif. est q. in quasi Usufructu [illegible] [illegible] de Usufructu earum rerum, in mutuo vero [illegible] argum. [illegible] in [illegible] Fachin. l. 2. [illegible] 32 [illegible] temporis intervallu[m] [illegible] dicimus 105 [illegible] de [illegible]. 3 dif. est in quasi Usufructu [illegible] tantundem in genere [illegible] aestimatione [illegible] acceptum est reddere sufficit, [illegible] in cautione [illegible] d. l. si Vini 7. secus autem in mutuo [illegible] in quo [illegible] eiusdem [illegible] qualitatis Bonitatis reddendum, [illegible] notavit [illegible] 9. S. [illegible] de bonis maternis [illegible] 9., 43. [illegible] Leothard. de Usuris q. 3. n. 18., [illegible] quasi Usufructu[illegible] [illegible] cum mutuo [illegible] inter duos [illegible] bene [illegible] de discrimine, [illegible] satis sit =

8

[illegible] da [illegible]

una illa, quasi neque numerando, aut mittendo, aut adpendendo in hoc da mus ut accipientis fiant &c.

domini in accipientis fiant, erit. inde mutuum appellatum est, quasi comeo tuum fiat ... 2. § nec vacat ff. de reb. cred. ...

... arg. ... in l. alienationes ... 3 §. ... ff. de pig. l. traditio 20 ff. de acquir. rer. dom. l. nemo plus 54, et 120 ... tertio. Jur. ...

in accipientes, et mutuum ... ut si pecuniam ... mandato ... mihi ... ut credita nomine ... nec dum meus sit pecunia ... tradita, ... mutui pecunia transeat l. singularia 15 ff. de reb. cred. ... Benignitas ... l. licet 43 § 1 ff de iur. dot. ... mihi ...

... ff de donat. inter vir. et ux. = Cui Ulpiani sententiae valde ... Africani decisio in l. si negotia 34 ff. mandati ... positis ... Africa. in d. l. si negotia ... 8 ... 8 ... d. l. singularia n. 52 Julius Pacius cent. 3 q. 66. Brochus ...

... Afric. de iure ... respondiset in d. l. si negotia ... Ulp. Vers. de iure benig. ... singularitere recepto ... sententia ... Africani ... suo relati putant ... 241 ff de reg. iur. ... Afric. in d. l. si negotia ... iure singulari ... 5 ... in l. frater a fratre 3 § ... ff. de ...

... Ulpiani ... scriptores ... tamen potuerunt ... Ant. Fab. lib. 2 ... cap. 18 ... 3 cap. 19 ... in d. l. singularia, et in d. l. si negotia ... sentire Ulp. a Afric. ... inexplicabilia esse ... ex more ... Schil. lib. 7 ad Ant. Fab. tractatu 16 ...

... experit. 9 q. 6. et ante eos ... Pals. in d. l. singularia ... aliter ... ff. de reb. cred. ... exemplis. Donell. in d. l. singularia ... 25. Bachin. lib. 11 ... c. 44 Jo. Ihm. lib. 12 observ. cap. 27 Corras lib. 6 miscel. ... Joann

Probatur [illegible] sen. pr. Charond. lib. 3 verisimilium [illegible] mori ad [illegible] se
rel. Rich. ad n. 13 et Hunnius in [illegible] v. l. disp. 1 & 2 [illegible] 183.
[illegible] tractant [illegible] 9. 6. omnes varias conformiter [illegible] rationes cap.
2° suppositis ita scilicet [illegible] [illegible] ut [illegible] singular [illegible] credere
tertio [illegible] manus fictione quam [illegible] circuitus vitandos admi
[illegible] [illegible] licet 43 § 1° et [illegible] l. 38 [illegible] 12 [illegible]
Propter q. § 1 ff. ad Maced. Afric. vero procedit ab stractas hac fictione
quam in [illegible] eadem [illegible] ratione non fuit aurus admittere [illegible] inspecta
rei veritate quam [illegible] contendit mutuum non [illegible] neque [illegible] [illegible]
sequenda [illegible] doctissimi Rich. [illegible] d. n° 113 =

Cadem fictione admin.

intelligendum [illegible] in l. rogasti 11 ff. de reb. cred. quo loci proponitur titius
mergasse ut ei pecuniam crederem numeratam quam cum non haberem massam auri [illegible]
gemini ei tradidi ut venderet nummisque expensis venditione [illegible] [illegible] [illegible]
[illegible] extitit [illegible] in nummis mutuum subsisteret contra de mutui principia [illegible]
dicte quaestioni repugnant, quia redacti nummi nunquam fuerunt in dominio meo neque
[illegible] [illegible] mea [illegible] [illegible] iura in l. si [illegible] [illegible] cund. l. approbatione
21 C. de probationibus l. quamvis 17 ff. de pig. l. penult. C. de dist. pig. l. si
[illegible] C. deposit. l. 9 [illegible] 488 fin. ff. de furt. docent ... repetentes ad [illegible]
[illegible] lib. 5 observ. [illegible] cap. 29 et tractat. 2 ad Afric. in l. si cum 28 [illegible]
[illegible] cred. Ant. Fab. lib. 5 [illegible] cap. 9 excepto favore militiae ut [illegible] expl. sive
[illegible] C. de [illegible] notant [illegible] Bald. et [illegible] repetentes in l. [illegible]
[illegible] [illegible] lib. 2 de privilegiis militum privileg. 6 [illegible] lib. 3 de iure [illegible] 67
n° 7. Ant. Fab. d. cap. 9 minoris etatis l. 24 [illegible] quando [illegible] l. si arbitrium
in Curator. 3 ff. C. arbitrium [illegible] notant [illegible] [illegible] [illegible] si card. n° 3.
Collant. in [illegible] ad pragmaticas in favorem [illegible] augmentariis lib. 3 cap. 4 n° 5 Hu
nnius in [illegible] v. 1° disp. 15 q. 29 et [illegible] 2 disp. 8 q. 35 quamvis dissentiant
Ant. Fab. d. cap. 9 et [illegible] select. disp. v. 1° disp. 15 [illegible] [illegible] aut [illegible]
bore dotis l. [illegible] 54 ff. de iur. dot. ut advertit Donel. lib. 5 [illegible] cap. quos
exceptos casus notant Bart. Bald. Alber. Salicet. [illegible] Cast. et Ang. in
d. l. sicut proponit Gilhen. in l. approbatione 21 n° 3 C. de probat. quod ex [illegible]
mutuum [illegible] redacti nummi non [illegible] et ita Afric. respondit in d. l. negotia
34 atque nummi [illegible] manus fictione intelligimus [illegible] traditi et tamen in
mutuum dati [illegible], [illegible] in d. l. rogasti mutuum [illegible], sin vero abs
traham [illegible] rei veritatem videremus mutuum non erit et ita Afric. notant
hec iura ita esse ponenda Brochord. cent. 2 assert. 23 [illegible]
cent. 4 q. 54 Hun. lib. 3 [illegible] tract. 8 part. 1 q. 5 et in [illegible] v. 1 disp.

C

28 q. 22 licet aliter accipiant Donell. in d. § regulis n° 3. Cuiac. lib. 8. obs. Cap. 8. Ant. Fab. in rationali ad d. § utrumque Theoph. d. disp. 2. cap. 3. lit. B. Robert. lib. 2. sent. cap. 5. Mort. d. q. 6. n° 10

n° 10

... ferens et quoniam nobis non eadem res, sed alia eiusdem naturae et qualitatis redditur — l. 2 § 1 ff. de reb. cred. — [illegible] alia [illegible] mutui qualitas necessario significatur; et enim ita dicebat Paulus in d. l. 2. ff. de reb. cred. mutuum damus recepturi non eandem speciem, quam dedimus, sed idem genus aliogn. [illegible] esset si eadem reddenda species indefinite concederetur ad usum, videlicet commodatum si ad certum tempus, usum vero [illegible] aut depositum si custodiae causa traderetur, quod nec [illegible] tradit [illegible] ceduntur ad usum quo ipse sumuntur necesse est expressa mutui et earum rerum non eandem speciem quae [illegible] sed alia eiusdem naturae et qualitatis restitui. Ex quo notatur veritatem et [illegible] convenientiorem esse [illegible] lecturam quam illa [illegible] aliqui in textibus [illegible] ponunt ita expressa, et quandoque non eadem res [illegible] quasi de natura mutui sit eandem speciem reddi licet quandoque aliter contingat quod est ab [illegible] dissimus et licet respondere possit [illegible] quandoque quando [illegible] accipi [illegible] quandocumque seu quoties [illegible] mutuum [illegible] nobis non eadem res sed alia eiusdem naturae et qualitatis redditur, [illegible] [illegible] ita [illegible] [illegible] in d. [illegible] n° 50 [illegible] in l. [illegible] 15 ff. de legat. 3. ubi notat [illegible] 25 ff. [illegible] 91 ff. de [illegible] et dem innumera iura [illegible] Bris. [illegible] 15 [illegible] quandoque quae [illegible] tenent Ant. [illegible] lib. 3. emend. Cap. 7 Ant. [illegible] Ant. Mattaeus in [illegible] et Ioann. [illegible] n° 15 [illegible] ad tit. de reb. cr. n° 33. et sequenter [illegible] ita [illegible] notat, Ant. Fab. in [illegible] ad [illegible] in l. tutor 27 in [illegible] ff. de [illegible] [illegible] quandoque non [illegible] aliquo [illegible] aliquo tempore [illegible] esse [illegible] in l. [illegible] 42 ff. de iur. dot. ut [illegible] explicant [illegible] Gardin. et Duareix in [illegible] dot. [illegible] in l. 2. n° 11 de reb. cred. [illegible] lib. 2. inst. tit. 4° de [illegible] § 2. [illegible]

Verior tamen lectura est quae ita exprimitur, et quoniam nobis non eadem quae [illegible] in l. 2. [illegible] n° 6 [illegible] n° 15. [illegible] n° 6 ff. de reb. cred. [illegible] in [illegible] inst. in [illegible] et Cominas. Vario [illegible] res sit necesse esse eo animo destinationem [illegible] non eadem [illegible] alia eiusdem naturae, et qualitatis reddatur inde intelligendus Senec. [illegible] de beneficiis [illegible] 18 ibi, et ideo diligentius quaerendum est beneficii quae [illegible] [illegible] eiusdem reddendum est quantum accepi [illegible] in individuo [illegible]

A. Rutta

q simile et aequale ut dicitur in d. l. ne dixit q accepit quo a aut ... Et
No. 6. cu. d. limitatus dedentis sic agg. sperati recipere q gratia e coius?
ne et creditores peccantes fenerantes ut recipiant equalia dici eadem
et ratione desere et d. hentes satis negative hoc est ut d. animo non sint q
parie ne ... habet exprimunt. s. sit sua iura q. id demum
... q. 3 A. dereli cred. ceterum post ... pt duilior
eandem ... diminuta aut corrupta et in uiro crearint ... obvenenec
hoc pugnat ... q. hec epigit. positus et intentiog. ... hentis
... negatiue tempore ... de domino gran... ando agit et licet
postea eade ... aut numero ... sdanti ... ideo inmutar mu
cui hac tempore ... perfecte ... nec recusare creditor ... eiusdem
... et in nulla expa ... in d. tit. arg. ... ind. credito
... 93 ... desolut. ita d. ... tenuit Aeurs. in d. ... vbo speciem
cui saltem bune ... ibi n. ... Alciat. n. 5 Donel. n. 5 Corras ...
... n. 2 et in 2. n. 5 et 6 ... n. 13 et ... inrdali ... ad
... in d. ... vbo ... Cich. n. 54 Tabius. Firo n. A
Juben. n. 23 Hojnothom. n. 10 ... Crotheg mathe. 3. Doubileus
... Freuler. disp. ... disp. 20 ... lit. i. = ... triaz.
tamen ... defendunt ... notatus ab Aeur. Visum ... Duar.
ad ... dereb. cred. ... 2. ... 5 ... mutui obligatio ... Vonnius ... in ... senti
n. 33. q ... primis firmat et ... dicta in ... Chr.
in ... n. 14 et 15. et Ingolstio ... rei sentiunt de necessitate
mutui esse n. ... ne aliter diuniar, ... ne ... Quae q ... ex ...
... principiis ... nientior ... q tempus n. ... disputare n.
vacat =

Tandem concludit ... ex hoc ... actiog ... cerri dicto
denominans ... actio ... ex ... sibi adduxit ... tonales ...
... de actionib. ... dicta ... appellam. ... ind. eod. ... tamen
una ... ex ... et ... generalit ... ex omni causa ex qua certum pe
... certi condictio ... dereb. cred. ... ad hanc ... certi ... necesse
certi condictio ex tali ... dicitur ... certi condictio ex emptio aut ex lo
cato ... ex emptio ... locatio interueniat et ... notant Bach. ... arat.
17 n. 7 et 8. Alciat. in d. l. certi condictio n. 4. Ant. ... n. ...
... Cich. ... n. 148. Ant. fab. de erroribus
... 83. error. 3. et ... ad d. l. ... insinuant ... disp. 20
... l. 3 ... G. 31 sic et in mutuo certi condictio mutui actio denominat
... n. ... Cons. ... q ex mutuo ... actio ... certum ... in

A. ...

nec diligi -

q. l. q. Ac. ut. ione triticaria q ea certa petit. Quam sicut ingeni... omnis condictionis nomen, e alia acto speciali q ep eo ... ita denominatur ut actio ex empto, actio commodati, locati ... ita in mutuo ... certi condictio denominatur actio ex mutuo = nam ... actio mutui actio appellatur in d. l. neq. respondetur ideo mutui actio nomine condictionis certi alio loco vocitari q hoc potius speciale q. e ... mutui condictionis q ex eo nascitur ut ... sit et in de ... g. petatur ... rei restituenda sit eius dem qualitatis nas et quantitatis ac fuit tradditio necesse e sit certum q ex eo ... petitur et adeo certum ut nullo casu ... debitum posset ... = q scribe ... l. incendium 11 ... si cert. pet. nec fuit necess. = alias ex mutuo denominatio ... declarati certi =

Huic = condictione q simpliciter ... ad mutuum re = operi ... fine ... = ... certi condictio ... die = die ... decembris hora = ... inde actio ex eo ... undecima ab anno Domini = condictio certi absolute = 1653 autore supra dicto D. D. = vocatur ... D. Joseph ... in ... = ... universitate sit ad gloria et honorem Domini = sit Deus = ... et Virginis Mariae Matris eius = ... matre = = sua =

= Benedictus =

D. Ignatius Ant.º Villalobos

me scripsit.

C